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INDIAN LAND LAWS

BEING A TREATISE ON

INDIAN LAND TITLES IN OKLAHOMA AND UNDER THE GENERAL ALLOTMENT ACT, AMENDMENTS AND LEGISLATION SUPPLEMENTAL THERETO, INCLUDING A FULL CONSIDERATION OF CONVEYANCES OF LANDS OF MINORS, DESCENT, DOWER, CURTESY, TAXATION, EASEMENTS IN AND ACTIONS AFFECTING TITLE TO ALLOTTED INDIAN LANDS

ALSO

A COMPILATION OF TREATIES, AGREEMENTS AND STATUTES APPLICABLE THERETO, FULLY ANNOTATED

SECOND EDITION

By *S. T. Bledsoe*
BY S. T. BLEDSOE
OF OKLAHOMA CITY, OKLAHOMA BAR

KANSAS CITY, MO.
VERNON LAW BOOK COMPANY
1913

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PREFACE TO SECOND EDITION

WHILE but five years have elapsed since the publication of the first edition of Indian Land Laws, the unusually rapid development of this phase of the law of land titles in Oklahoma seems to render desirable a second edition.

In preparing the second edition, the larger part of the text has been rewritten, and the remainder revised, enlarged, and brought down to date. A much more thorough and complete consideration is given matters relating to the alienation and other disposition of allotted lands in the Cherokee, Creek, and Seminole Nations, and to descent, probate procedure, mineral leases, and taxation, than was given in the first edition. Additional subjects discussed are those of easements in Indian lands, jurisdiction of controversies affecting Indian lands, and actions affecting Indian lands.

All treaties, agreements, and legislation affecting in any manner titles to allotted Indian lands in Oklahoma, including the General Allotment Act, amendments and legislation supplemental thereto, the Arkansas Statute on conveyances and dower, and the Arkansas and Indian Statutes on descent, are reproduced in full and thoroughly annotated. This makes readily available in convenient form all legislation necessary to be considered in dealing with any matter relating to allotted Indian lands in Oklahoma.

The Index is the work of Mr. Clinton O. Bunn of the Oklahoma City Bar, and the Table of Cases of Mr. H. L. McCracken.

I desire to express to the profession my appreciation of the kindly consideration given the first edition, and to indulge in the belief and hope that I have succeeded in making a more useful book.

S. T. BLEDSOE.

NOVEMBER 1, 1913.

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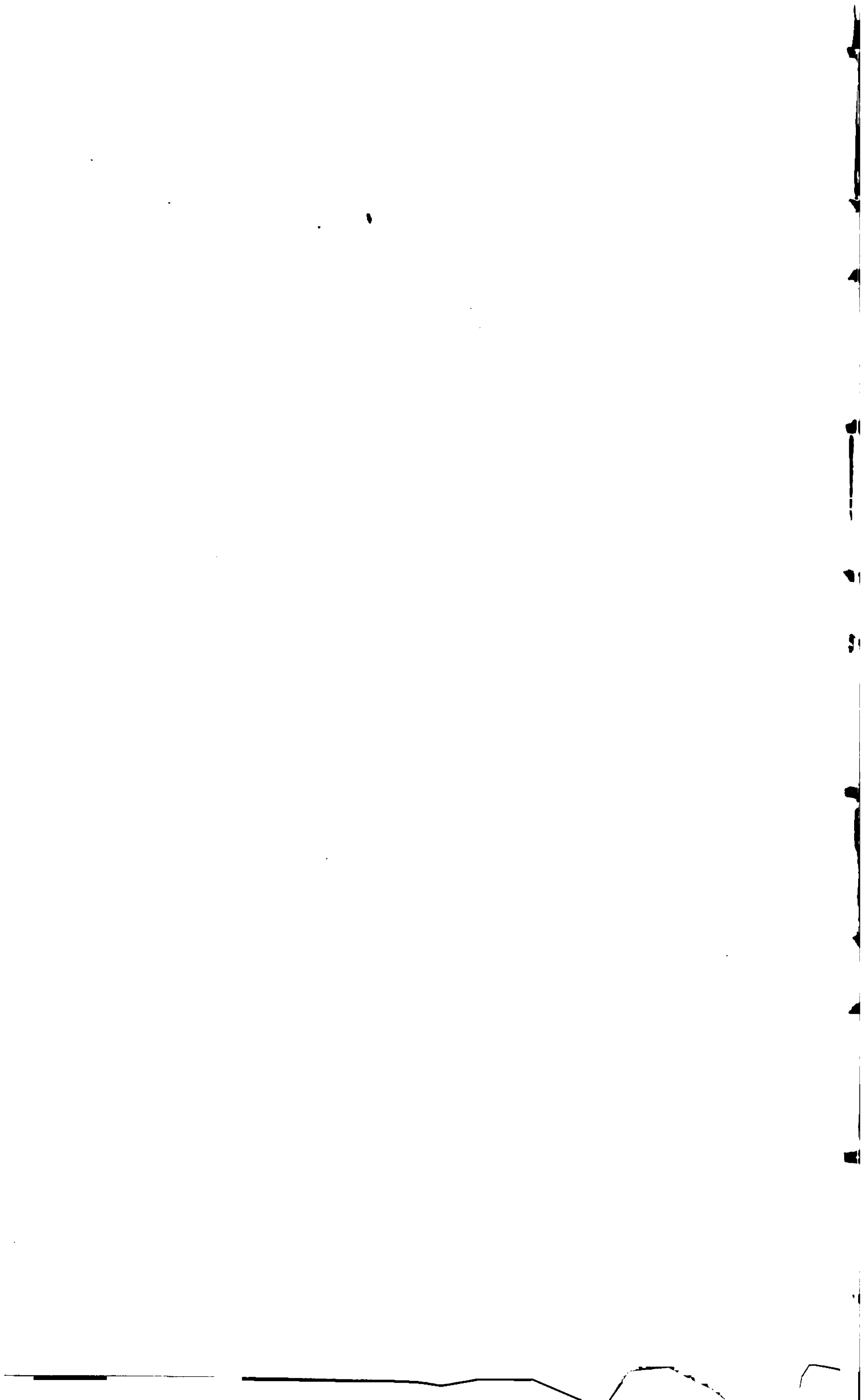
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INDIAN LAND LAWS

SECOND EDITION

PART I

CHAPTER I

INTRODUCTION

- § 1. Scope of work.
- 2. Plan of work.
- 3. Legislation reproduced.

§ 1. **Scope of Work.**—Individual titles to more than twenty-three million acres of land in Oklahoma have been acquired by allotment in severalty of tribal lands of various Indian tribes. Allotment of these lands has been made under more than twenty-five separate and distinct allotment agreements, and the right of alienation and the control of descent and partition has been regulated by more than fifty separate acts of Congress, in addition to the legislation contained in the allotment agreements and the general allotment act, under which some of the tribal lands were allotted. The purpose of this work is to discuss the title of allottees of all Indian lands in the state of Oklahoma, the right of alienation thereof by the allottee and his heirs, including the right to lease, mortgage, will, or make other disposition thereof, the descent and partition of allotted Indian lands, easements in Indian lands, the jurisdiction of courts of controversies affecting Indian lands and the right of the state and its municipalities to tax such allotted Indian lands.

It is necessary to a proper understanding of these subjects that consideration be given to the tenure by which

the various tribes held their tribal lands, the legislation of Congress in reference thereto, in some instances before as well as after allotment, including the various treaties or agreements between the United States and the tribes, the general allotment act, amendments thereto and legislation supplemental thereof. Particular phases of the agreements of special importance are those imposing, extending or removing restrictions on alienation, and legislation making final the rolls of membership of the tribes as prepared by the Secretary of the Interior and making certain of such rolls conclusive as to the quantum of Indian blood and age of the allottee. The provisions of the agreements and subsequent legislation relating to descent, distribution, dower, curtesy, leases (for agricultural, oil and gas purposes), and mortgages, as applicable at different times to the allottees and the allotted and inherited lands of the several tribes, is of the very greatest importance, and, in many instances, involved in much doubt and uncertainty. Inherited Indian lands constitute a very large percentage of alienable Indian lands. Titles to such inherited allotted Indian lands are dependent largely upon the proceedings in the county courts in the exercise of their probate jurisdiction in the matter of sales of lands of minors. Because of the importance of this phase of the matter a chapter has been given to the consideration of this subject. The effect of judicial proceedings, other than those in probate, upon the title of allotted and inherited lands is of such importance and is so complicated in its nature as to make it desirable that a discussion at some length of this subject be included.

A very large part of the state of Oklahoma is threaded with oil and gas pipe lines, and with telephone lines. To meet this situation a chapter is devoted to the subject of easements in Indian lands. It is not the purpose to present a text-book upon the subject of real estate law in the state of Oklahoma, but to deal generally speaking with such phases of the law of real estate as have special ap-

plication to allotted and inherited allotted Indian lands, and particularly with reference to the segregation of tribal into individual titles, and the transfer, incumbrance, descent, etc., of such lands.

§ 2. **Plan of Work.**—It has been practically impossible to make a scientific arrangement of the subjects considered. The legislation covers such a diversity of subjects, applies so many different rules, and extends over such a long period, that it is thought advisable to endeavor to present a practical rather than a scientific arrangement of the subjects considered. The plan adopted is to follow the legislation by which the tribal holdings of each individual tribe have been converted into individual titles, to consider the restrictions imposed on alienation of allotted and inherited lands of each of the several tribes under the allotment agreement or act under which allotment was made separately, and as to subsequent legislation to group together the tribes to which the legislation is applicable.

The law of descent as applied to all tribes has been treated under the title of descent, each tribe being considered separately. The same is true with reference to the subject of taxation. Other matters of importance are treated under independent titles.

§ 3. **Legislation Reproduced.**—The various allotment agreements under which the lands of most of the Indian tribes in the Indian territory were allotted in severalty are distributed through sixteen volumes of the United States Statutes at Large, and acts of Congress applicable to the allottees of one or more of the Indian tribes in Oklahoma are distributed through an equal number of the United States Statutes at Large.

All allotment agreements have been compiled and are reproduced as part II of this book. The general allotment act, amendments thereto, legislation subsequent thereto and legislation affecting the allotted lands of all the allottees in Oklahoma have also been compiled and repro-

duced for convenience. In addition thereto the statute on conveyances in force in the Indian Territory, and the Arkansas statute of descent and distribution, in force in said territory, have each been reproduced in full, because they are not now readily available to the lawyers of the state, or other persons who will have to deal with the matters discussed in this work.

The purpose is to make available in this volume all legislation necessary to be considered in connection with determining the right of alienation and other disposition of allotted Indian lands, descent, the right to tax Indian lands, easements in Indian lands, and other miscellaneous, but important, matters relating thereto. This legislation has been fully annotated with all decisions directly applicable, brought down to date of publication, so as to present for use such legislation with whatever construction or interpretation may have been given it.

CHAPTER 2

INDIAN LEGISLATION

- § 4. Congressional supremacy.
- 5. Reservation in enabling act.
- 6. Application of Indian legislation.
- 7. Interpretation of Indian Treaties, agreements and legislation.

§ 4. Congressional Supremacy.—The Constitution of the United States, article 1, section 8, provides that: "Congress shall have power * * * to regulate commerce with foreign nations and among the several states and with the Indian tribes." This grant of power to Congress by the several states was more in the nature of an affirmation of authority as then exercised than as a new grant of authority to be exercised in the future. It has been said by high authority that the duties and obligations of the national government to the aborigines of the United States antedate the Constitution and the grant of authority therein contained. The authority of Congress, in dealing with Indian tribes, wherever it sees fit to exercise its power, is exclusive and plenary.¹ It is as broad as the authority to regulate commerce with foreign nations and among the several states. It will be observed, however, that this authority extends only to the regulation of commerce with Indian tribes. The constitutional provision fixes the otherwise inexplicable importance attaching to tribal existence.

¹ Worcester v. Georgia, 6 Pet. 515, 8 L. Ed. 483; Bates v. Clark, 95 U. S. 204, 24 L. Ed. 471; In re Crow Dog, 109 U. S. 556, 3 Sup. Ct. 396, 27 L. Ed. 1030; Stephens v. Cherokee Nation, 174 U. S. 445, 19 Sup. Ct. 722, 43 L. Ed. 1041; Jones v. Meehan, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; Cherokee Nation v. Hitchcock, 187 U. S. 294, 23 Sup. Ct. 115, 47 L. Ed. 183; Lone Wolf v. Hitchcock, 187 U. S. 553, 23 Sup. Ct. 216, 47 L. Ed. 299; United States v. Rickert, 188 U. S. 439, 23 Sup. Ct. 478, 47 L. Ed. 537; In re Heff, 197 U. S. 488, 25 Sup. Ct. 506, 49 L. Ed. 848; Thomas v. Gay, 169 U. S. 264, 18 Sup. Ct. 340, 42 L. Ed. 740; Tiger v. Western Investment Co., 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820.

Congressional legislation frequently evidences an intent to keep alive tribal existence long after there has ceased to be tribal organization, tribal property, or other apparent reason for continuing tribal existence. The former members of the Five Civilized Tribes are citizens of the United States, and of the state of Oklahoma, and are subject to its laws, civil and criminal, distributed among the other citizens of the United States resident of the state without distinction, many of them hold state offices and many more county and local offices under the state government of the state of Oklahoma. Tribal existence, like the fictions of common-law pleading, still attaches by congressional action, and is made the basis of an authority which could not otherwise be exercised.

§ 5. Reservation in Enabling Act.—The enabling act under which Oklahoma was admitted to statehood, approved by the President June 16, 1906, contains the following reservation of congressional authority in reference to Indians within the territorial limits of the state: "That nothing contained in the said Constitution shall be considered to limit or impair the right of person or property pertaining to the Indians of said territory (so long as such rights shall remain unextinguished) or to limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights, by treaties, agreement, law or otherwise, which it would have been competent to make if this act had never been passed."²

By another provision of the enabling act³ it was required that the Constitution of the state of Oklahoma contain a provision that the people inhabiting said proposed state do agree and declare that they forever disclaim all right

² Act June 16, 1906, c. 3335, 34 Stat. 267; Williams' Const. & Enabling Act, § 413.

³ Act June 16, 1906, c. 3335, 34 Stat. 269; Williams' Const. & Enabling Act, § 415, par. 8.

and title in and to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said domain owned or held by any Indian tribe or nation, and that until the title to any such public lands shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States.

The first reservation would ordinarily be construed as to the right to deal with tribal Indians and tribal property. In the light of the constitutional provision, however, and the effect given to tribal existence by departmental action and judicial interpretation, it is probable that the authority of Congress still exists to legislate with reference to former members of the Five Civilized Tribes, and with reference to their property, in so far as the same, or any part thereof, may be subject to restrictions upon alienation, or existing congressional or departmental control. It is not believed that the reservations in the enabling act confer upon Congress the authority to legislate with reference to a former member of the Five Civilized Tribes who has become a citizen of the United States and of the state and holds his lands free from restrictions upon alienation or other congressional regulation. It will be observed that there is a marked distinction between the congressional reservation of authority as to Indian lands, and as to public lands. The people of the state are required to disclaim all right and title in and to both public lands and lands held by any tribe or nation, but it is only public land that is to remain subject to the jurisdiction, disposal and control of the United States. The interpretation of these various provisions and of other legislation affecting the Indians of the Five Civilized Tribes has caused the Supreme Court of the United States to feel it necessary to announce that its opinions and judgments in relation to these matters are not in conflict.⁴

⁴ Choate v. Trapp, 224 U. S. 685, 32 Sup. Ct. 565, 56 L. Ed. 941.

§ 6. Application of Indian Legislation.—The tribal lands of most of the Indian tribes in Oklahoma were allotted under special allotment agreements; a few under the General Allotment Act. The special allotment agreements made with a number of the tribes provide in substance that the general allotment act shall control in all particulars relating to the character of title passing, the right of alienation, descent, and other matters relating to the occupancy, use, or disposal of the allotted lands. The agreements are so worded as to make not only the General Allotment Act, but amendments, and legislation supplemental thereto, applicable.

In order to relieve, as far as possible, such uncertainty as existed with reference to the application of Indian legislation, a statute was enacted by Congress declaring that, where not otherwise specifically provided, all allotments in severalty to Indians outside of the Indian Territory should be controlled by the General Allotment Act, amendments thereof, and legislation supplemental thereto, and should be subject to all the restrictions and carry all the privileges extending to allotments made under such act and the acts amendatory thereof and supplemental thereto. Some misapprehension has arisen from an assumption that the general laws relating to the allotment of lands to members of Indian tribes and the issuance of trust patents therefor apply to members of the Five Civilized Tribes. Congress has, from the beginning, legislated for the Five Civilized Tribes by special acts not applicable to other Indian tribes. It has also exempted the Five Civilized Tribes from legislation applicable to other tribes. Sometimes this has been done by express provision of the statute, and at other times by the use of language which is so clearly inapplicable to conditions existing among the Five Civilized Tribes as to make it certain that such legislation should not apply to such tribes. So far as the tribal title to the lands of the Five Civilized Tribes, the allotment of the

same in severalty, the title secured to the allottee, the manner in which such title is passed, are concerned, all are dependent upon laws enacted with special reference to one or more or all of these tribes, which have no general application to other tribal Indians.

§ 7. **Interpretation of Indian Treaties, Agreements and Legislation.**—In the early days a rule of interpretation of Indian treaties was adopted that they must be construed, not according to the technicality of their words to learned lawyers, but in the sense in which they would naturally be understood by the Indians making the agreements, as the unlettered people understood them, as justice and reason demand in all cases, and that words should not be given a more extended meaning than their plain import, although they may be susceptible of such interpretation in the connection in which used.⁵ The declared purpose was to give to such treaties the interpretation given to them by the members of the tribe at the time of their making. This rule of interpretation has recently been extended to apply to legislation which the Indians had no part in making, and such legislation has been interpreted either as it is assumed the Indians interpret it, or as it should be interpreted to best serve and protect their interests. Much uncertainty has arisen out of this method of judicial interpretation of Indian legislation. Courts, in their desire to protect the Indian allottee against his own improvidence, have frequently disregarded the language of the statute, the context, and the ordinary indicia of legislative intention. Under such rules of interpretation each judge becomes a law unto himself. Congressional acts cease to have the same force and effect as they have else-

⁵ *Kansas Indians*, 5 Wall. 737, 18 L. Ed. 667; *Worcester v. Georgia*, 6 Pet. 515, 8 L. Ed. 483; *New York Indians v. United States*, 170 U. S. 1, 18 Sup. Ct. 531, 42 L. Ed. 927; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *United States v. Choctaw Nation*, 179 U. S. 494, 21 Sup. Ct. 149, 45 L. Ed. 291; *United States v. Winans*, 198 U. S. 371, 25 Sup. Ct. 662, 49 L. Ed. 1089.

where and the meaning of such law as it will be finally interpreted can be measured by no fixed standard. Such interpretation brings doubt, uncertainty, litigation, and disturbance of titles, and will ultimately do the Indian who is sought to be protected thereby more harm than good.

CHAPTER 3

INDIAN TITLES

- § 8. Original Indian titles.
- 9. Modified Indian titles.
- 10. Evolution of Indian titles.

§ 8. **Original Indian Titles.**—The nature, character and extent of the original title of the Indian tribes inhabiting North America at the time of the discovery, and subsequent thereto, has been the subject of much controversy and litigation. As finally adjudicated by the Supreme Court of the United States, such tribes held the right of occupancy with authority to make disposition only to the United States.¹ Such right of occupancy was, however, unquestionable and continued until extinguishment by voluntary cession to the United States, or with their consent. It was never deemed that the right of discovery destroyed or impaired the Indian right of occupancy, or conferred upon the United States authority to secure such right otherwise than by consent of the tribe having the same. Courts have usually spoken in the highest terms of the moral and legal rights of the various Indian tribes to the lands occupied by them and have held the Indian right of occupancy to be as sacred as the governmental right to the fee.

§ 9. **Modified Indian Titles.**—From time to time the right of occupancy of the various Indian tribes to the lands then occupied by them were acquired by the United States, and such tribes removed, generally westward, to various locations. Such removals were to reservations of public

¹ *Johnson v. McIntosh*, 8 Wheat. 543, 5 L. Ed. 681; *Cherokee Nation v. Georgia*, 5 Pet. 48, 8 L. Ed. 25; *Holden v. Joy*, 17 Wall. 211, 21 L. Ed. 523; *Leavenworth, L. & G. R. R. Co. v. United States*, 92 U. S. 733, 23 L. Ed. 634; *Beecher v. Wetherby*, 95 U. S. 517, 24 L. Ed. 440; *Buttz v. Northern Pac. R. Co.*, 119 U. S. 66, 7 Sup. Ct. 100, 30 L. Ed. 334.

land designated by executive authority for tribal use, or to lands purchased by such tribe from the United States. Members of the tribe were kept together on the reservation, under supervision of representatives of the Department of the Interior; they were not permitted to leave the reservation except in rare instances, and were regarded as incapable of making any contract affecting their personal or property rights, except as to minor matters with other members of the tribe. It became apparent that this method of segregation retarded rather than aided the conversion of the Indian to the customs and habits of civilized life.

§ 10. Evolution of Indian Titles.—All tribal lands were held by the members of the tribe in common. In the first half of the nineteenth century individual rights of occupancy were conferred upon members of certain tribes as to particular parts of the tribal domain. This was a segregation of the right of occupancy rather than a setting apart in allotment of a particular tract or parcel of land to a member of the tribe. It was, however, a preliminary step to the allotment or segregation of tribal lands in fee.

In 1882 there was a change of policy in the handling of Indian affairs, evidenced by a disposition to require, as far as possible, the allotment of tribal lands in severalty and the conferring of rights of citizenship, state and national, upon the members of Indian tribes to whom allotments were made.

After some preliminary legislation this policy was crystallized in the General Allotment Act of 1887 (Act Feb. 8, 1887, c. 119, 24 Stat. 388), but modified by the amendments thereto and supplemental legislation. The Five Civilized Tribes in the Indian Territory were excluded from the General Allotment Act and dealt with by an independent commission and special legislation.

In 1906 Congress apparently became apprehensive that many of the members of Indian tribes, to whom allotments had been and were being made under the General Allot-

ment Act and amendments thereto, were not capable of exercising the rights of citizenship and control of their allotted and inherited lands. As a result of this apprehension the General Allotment Act was so amended as to bring allottees, to whom trust patents were thereafter issued, under the control of the Secretary of the Interior. The policy which found expression in the Act of May 8, 1906, has been followed since said date as to Indians other than those of the Five Civilized Tribes, and has been evidenced by some legislation enacted with special reference to those tribes. It is also further emphasized by the Act of June 25, 1910. This policy, however, was directed to the retention, and possibly to the regaining, of departmental control over Indian allottees and allotted Indian lands in certain cases, but did not constitute a departure from the policy of allotment in severalty of Indian reservations.

Allotments to the less capable Indians are made in trust and title held by the United States for a period of twenty-five years. Allotments to more capable Indians are made and a fee simple title passed to the allottee, subject to certain restrictions on alienation. In a few instances allotments have been made without restrictions on alienation. As a result of this evolution in policy there has been an evolution in Indian titles from the original right of occupancy to certain reservation rights, thence to a trust patent in some instances, followed by a fee simple patent, and in others by a fee simple patent in the first instance. Whatever the method, the purpose has been to convert the holding in common into an individual fee title.

CHAPTER 4

TRIBAL TITLE AND OCCUPANCY

- § 11. In general.
- 12. Cherokees.
- 13. Choctaws and Chickasaws.
- 14. Creeks.
- 15. Seminoles.
- 16. Occupancy of tribal lands of Five Civilized Tribes prior to allotment.
- 17. Tribal title of other than the Five Civilized Tribes.
- 18. Occupancy of tribal lands other than those of the Five Civilized Tribes prior to allotment.

§ 11. In general.—Since the first edition of this book matters relating to the nature and character of the tribal title of each of the Five Civilized Tribes to the lands of such tribes respectively have ceased to be of more than historical importance. The same is true with reference to tribal membership. For this reason the consideration of each of these subjects as to all of the tribes will be grouped together in one chapter, and a brief reference will be made to the treaties and statutes for use in such isolated cases as may occur, where the consideration of these provisions may be necessary to the disposition of any controversy.

§ 12. Cherokees.—Numerous treaties were entered into between the United States and the Cherokees, the more important of which, and those determining the nature and character of the tribal title acquired by the Cherokee Nation, are as follows: The treaty of May 6, 1828;¹ the treaty of February 14, 1833,² with the Western Cherokees; and the treaty of December 29, 1835,³ with the Cherokees.

On the 31st day of December, 1838, pursuant to the provisions and guaranties contained in the above-mentioned

¹ Act May 6, 1828, 7 Stat. 311.

² Act Feb. 14, 1833, 7 Stat. 414.

³ Act Dec. 29, 1835, 7 Stat. 478.

treaties, a patent was duly issued to the Cherokee Nation reciting that: "The United States have given and granted and by these presents do give and grant unto the said Cherokee Nation the two tracts of land so surveyed and hereinbefore described. * * * To have and to hold the same, together with all the rights, privileges and appurtenances thereto belonging to the said Cherokee Nation forever; * * * and subject also to all the other rights reserved to the United States in and by the articles hereinbefore recited to the extent and in the manner in which said rights are so reserved, and subject also to the condition provided by the Act of Congress of the 28th day of May, 1830, referred to in the above recited third article, and which condition is, that the lands hereby granted shall revert to the United States if the said Cherokee Nation become extinct, or abandons the same."

Dissensions having arisen among the different bands of Cherokees, a new treaty was made August 6, 1846.⁴ The preamble to this treaty recited that numerous difficulties had existed for some time past between the different members of the people constituting the recognized Cherokee Nation of Indians, which it was desirable to speedily settle and to restore peace and harmony. It was provided, in article 1 of this treaty, that the lands then occupied by the Cherokee Nation should be secured to the whole Cherokee people for their common use and benefit, and that a patent should issue for the same.

At the conclusion of the Civil War (July 1, 1866) a further agreement⁵ was made with the Cherokee Nation, by which the treaty between the Cherokee Nation and the Confederate States was repudiated, amnesty was granted by the United States for certain crimes and misdemeanors, the confiscation laws of the Cherokee Nation were abro-

⁴ Act Aug. 6, 1846, 9 Stat. 871.

⁵ Act July 19, 1866, 14 Stat. 799.

gated, slavery was abolished in the Cherokee Nation, and full citizenship rights conferred upon certain Cherokee freedmen. The treaty contained elaborate provisions for the establishment and maintenance of tribal government and for the location of civilized Indians within the Cherokee domain. It was further provided that upon request of the National Council the Secretary of the Interior would cause the country reserved to the Cherokees to be surveyed and allotted among them at the expense of the United States. The title acquired by the Cherokee Nation was a qualified fee, with only the possibility of a reversion in the United States.⁶

§ 13. **Choctaws and Chickasaws.**—In 1820 a treaty was entered into by the Choctaw Tribe of Indians and the United States,⁷ by the terms of which the United States ceded to the Choctaws a tract of country west of the Mississippi river. The purpose of this cession was to promote the civilization of the Choctaws, the establishment of schools, and the perpetuation of the tribal or national existence. In furtherance of the same purpose, another treaty was made in 1830,⁸ by which the United States agreed to cause to be conveyed “to the Choctaw Nation a tract of country west of the Mississippi river, in fee simple, to them and their descendants,” etc. In 1837⁹ the Chickasaw Band of the Choctaw Tribe or Nation of Indians, being desirous of having segregated for their use and occupancy a district in the Choctaw Nation, a treaty was entered into between the Choctaws and Chickasaws and the United States

⁶ *Cherokee Trust Funds*, 117 U. S. 288, 6 Sup. Ct. 718, 29 L. Ed. 880; *Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U. S. 641, 10 Sup. Ct. 965, 34 L. Ed. 295; *Stephens v. Cherokee Nation*, 174 U. S. 445, 19 Sup. Ct. 722, 43 L. Ed. 1041; *Cherokee Nation v. Hitchcock*, 187 U. S. 294, 23 Sup. Ct. 115, 47 L. Ed. 183; *Cherokee Nation v. Southern Kansas Ry. Co.* (D. C.) 33 Fed. 900; *Mehlin v. Ice*, 56 Fed. 12, 5 C. C. A. 403.

⁷ Act Oct. 18, 1820, 7 Stat. 210.

⁸ Act Sept. 27, 1830, 7 Stat. 333.

⁹ Act Jan. 17, 1837, 11 Stat. 578.

by which a Chickasaw district was created. This was the first definite separation of the Chickasaw from the Choctaw Tribe. All agreements theretofore made had been between the United States and the Choctaws. All subsequent agreements were made between the United States and the Choctaws and Chickasaws. In 1855¹⁰ the grant to the Choctaws of 1830 was ratified and confirmed to the members of the Choctaw and Chickasaw Tribes, their heirs and successors, to be held in common, etc.

Some question arose as to whether or not by the espousal of the cause of the Confederacy the Choctaws and Chickasaws had forfeited the lands granted in the treaties referred to to the United States. This, among other reasons, brought about the treaty of 1866.¹¹ This treaty reaffirmed the previous grants and contained a provision for the allotment of the tribal lands in severalty to the members of the two tribes, including freedmen. The Chickasaws declined to ratify that part of the treaty conferring tribal rights upon the freedmen of that tribe.¹²

The differences in the provisions of the varying terms of the grants made to the "Choctaws," "Choctaw Nation," "to the members of the Choctaw and Chickasaw Tribes, their heirs and successors, to be held in common," resulted in much controversy as to the character of the title passing under the grants, the capacity in which the grantee or grantees held the title, and the rights of the various persons as beneficiaries under the grants.

These treaties and agreements as a whole were finally interpreted as a grant to the nations in their public or governmental capacity, and that the lands thereby granted became the public lands of the two nations and not the prop-

¹⁰ Act June 22, 1855, 11 Stat. 612.

¹¹ Act April 28, 1866, 14 Stat. 779.

¹² *United States v. Choctaw Nation*, 193 U. S. 115, 24 Sup. Ct. 411, 48 L. Ed. 640; *Flemming v. McCurtain*, 215 U. S. 56, 30 Sup. Ct. 16, 54 L. Ed. 88; *Ligon v. Johnston*, 164 Fed. 670, 90 C. C. A. 486.

erty of the individual members;¹³ that as tribal property such lands were subject to disposition by Congress.

§ 14. **Creeks.**—The Creeks, like the Cherokees, made numerous treaties with the United States with reference to the cession of the tribal lands east of the Mississippi and the acquiring of a tribal domain west of the Mississippi. The more important of these treaties are those of January 24, 1826,¹⁴ March 24, 1832,¹⁵ February 14, 1833,¹⁶ and August 7, 1856.¹⁷

By article 6 of the treaty of 1826 the United States agreed to examine the Indian country west of the Mississippi and to purchase for the Creek Tribe of Indians, if possible, upon reasonable terms, wherever they might select a country the extent of which should, in the opinion of the President, be proportionate to their numbers. The country to be so acquired was not to be within the limit of any state or territory or of the tribal domain of the Choctaws or Cherokees.

In article 12 of the treaty of 1832, the United States, being desirous that the Creeks should remove to the country west of the Mississippi, agreed that as fast as the members of the tribe were prepared to emigrate that they would be removed at the expense of the United States, and certain subsistence provided for their sustenance after they arrived at their new homes.

Article 14 of this agreement provided that the Creek country west of the Mississippi should be solemnly guaranteed to the Creek Indians.

By the treaty of 1833 the United States agreed to "grant a patent in fee simple to the Creek Nation of Indians for the lands assigned said nation. * * * The right thus

¹³ *Flemming v. McCurtain*, 215 U. S. 56, 30 Sup. Ct. 16, 54 L. Ed. 88; *Ligon v. Johnston*, 164 Fed. 670, 90 C. C. A. 486.

¹⁴ Act Jan. 24, 1826, 7 Stat. 286.

¹⁵ Act March 24, 1832, 7 Stat. 366.

¹⁶ Act Feb. 14, 1833, 7 Stat. 417.

¹⁷ Act Aug. 7, 1856, 11 Stat. 699.

guaranteed by the United States shall be continued to said tribe of Indians so long as they exist as a nation and continue to occupy the country hereby assigned them."

On the 11th day of August, 1852, the President of the United States executed a patent to the Creek Nation, granting "unto the said Muskogee or Creek Tribe of Indians the tract of country above described." By the treaty of 1856 the previous grants made to the Creek Tribe of Indians were confirmed, except as to certain lands which were, by the treaty, granted to the Seminole Tribe of Indians.

In 1866 another treaty¹⁸ was entered into between the United States and the Creeks, by which the treaty between the Creeks and the Confederate States was canceled. Under this treaty amnesty was granted to the members of the Creek Tribe, slavery was abolished, and the right of tribal citizenship or membership conferred upon the freedmen of the members of the tribe on certain conditions. This is the last of the treaties or agreements made with the Creek Tribe of Indians affecting the tribal title of the Creek Nation to the lands granted by the United States.

§ 15. **Seminole.**—By the first article of the treaty between the Creek Nation and the United States, of August 7, 1856,¹⁹ the Creek Nation granted, ceded, and conveyed to the Seminole Indians a tract of country bounded as follows: Beginning on the Canadian river a few miles east of the ninety-seventh parallel of west longitude, where Ockhi-appo, or Pond creek, empties into the same; thence due north to the North fork of the Canadian; thence up said North fork of the Canadian to the southern line of the Cherokee country; thence, with that line, west, to the one hundredth parallel of west longitude; thence south along said parallel of longitude to the Canadian river; and thence down and with that river to the place of beginning.

¹⁸ Act June 14, 1866, 14 Stat. 785.

¹⁹ Act Aug. 7, 1856, 11 Stat. 699.

It is further provided, in article 3 of this treaty, that "the United States do hereby solemnly guarantee to the Seminole Indians the tract of country ceded to them by the first article of this convention. * * *"

By the treaty of 1866,²⁰ the United States granted to the Seminole Nation certain lands obtained from the Creek Nation; the consideration paid therefor by the Seminoles being fifty cents per acre. By this treaty amnesty was granted to the Seminoles, slavery abolished, and the right of citizenship conferred upon persons of African descent residing within the limits of the nation. Provision was also made for the establishment and maintenance of tribal government by the Seminoles.

§ 16. Occupancy of tribal lands of Five Civilized Tribes prior to allotment.—Prior to the allotment of the lands of the Five Civilized Tribes in severalty, the members of each of said tribes, under tribal laws or customs, were permitted to segregate, occupy, and use certain portions of the tribal domain and enjoy the use thereof. Citizens of the United States not members of the tribes were permitted to reside within the borders of such tribes, either upon the permission of the tribal authorities or of the federal government. The influx of white population became so great that little attempt was made to regulate the occupancy of tribal property by white persons not members of the tribe. The occupancy by white people was usually under contract with a member of the tribe. These contracts were for improvement of the tribal domain by the white persons for the use and benefit of the members of the tribe. Cities and towns were laid out by the members of the tribes, and lots and parcels of land leased to white persons for the location of business houses and residence property. The result of this method of handling the tribal property was a reduction of a substantial part of the acreage of the tribes to

²⁰ Act March 21, 1866, 14 Stat. 755.

cultivation and the construction of improvements of a more or less permanent nature; also the congregation of considerable numbers of white people in villages and towns. Perhaps in the Five Civilized Tribes, at the time allotment began, there were as many as one hundred and fifty towns and villages, some of them having a population of four thousand to five thousand people. The improvements thus made on the agricultural land formed the basis of the preference right to take the same in allotment under the several agreements, and the improvements made upon town lots furnished the basis of the preference right to acquire title thereto under the townsite provisions of the various agreements.

§ 17. Tribal title of other than the Five Civilized Tribes.—Each of the several Indian tribes occupying reservations in the state of Oklahoma, other than the Five Civilized Tribes, acquired the right to hold the same by virtue of treaty, agreement, act of Congress or executive order. With but few exceptions there is slight difference in the character of title by which such tribes have held the various reservations. One of the few exceptions is that of the Osages, which tribe acquired and held title in the nature of a qualified fee. The tribal right of occupancy, however, was usually purchased and paid for by the tribes at prices substantially the equivalent of that which the Osages and each of the Five Civilized Tribes paid for the fee.

It is not considered necessary to discuss in detail the treaties, agreements, acts of Congress and executive orders by which the various tribes acquired their rights in and to the lands which they occupied. The right acquired by treaty or agreement, accompanied by grant, represents the highest character of title acquired or held by tribal Indians to tribal reservations. The next in rank is that acquired by act of Congress, which usually assumed the form of a

legislative grant. Not infrequently the legislative grant is but the execution of the terms of a treaty or agreement made with an Indian tribe.

The reservation by executive order hardly rises to the dignity of a title. It is a mere designation of a tract of land by the executive department of the government for the use and occupation of a given tribe of Indians. The reservation by executive order was sometimes, however, made pursuant to an agreement between the tribes and the United States, which agreement did not contemplate, receive or require the sanction of congressional approval. Such agreements were made by the President or by the Department of the Interior, under the general authority, conferred by Congress upon the executive department, of supervision over tribal Indians and tribal property. While the government of the United States, in the exercise of its guardianship over tribal Indians and tribal property, has used its authority to require, and sometimes to compel, a partition of the tribal property among the individual Indians, it has seldom, if ever, undertaken to do so where the tribal title is by grant, without having the assent of the tribe in some form to such partition or allotment in severalty.

§ 18. Occupancy of tribal lands other than those of the Five Civilized Tribes prior to allotment.—All persons not members by blood or marriage and not employés of the federal government were generally excluded from the occupancy of tribal lands or reservations of the tribes, except those known as the Five Civilized Tribes. An occasional building was constructed by a member of the tribe, and, in rare instances, small quantities of land were reduced to cultivation. Generally speaking, the only practical purpose to which these lands were put prior to allotment was that of cattle pasturage. They were leased in large areas to cattle companies for an annual considera-

tion. Small villages grew up around the agency buildings, but conditions were not such as to induce or promote the building of towns at other places. Such tribal lands, therefore, were practically unoccupied public or tribal domain at the time of allotment in severalty to the members of the various tribes.

CHAPTER 5

TRIBAL CITIZENSHIP

- § 19. In general.
- 20. Cherokees.
- 21. Choctaws and Chickasaws.
- 22. Creeks.
- 23. Seminoles.
- 24. Striking names from tribal rolls.
- 25. Tribal membership other than Five Civilized Tribes.

§ 19. In General.—Prior to the creation of the Commission to the Five Civilized Tribes in 1893, each of the Five Civilized Tribes had, under its laws and customs and by such tribunal as had been designated by the legislative department thereof, determined the right of citizenship or membership in the tribe. The Indian agent and the Secretary of the Interior had sometimes entertained appeals from the action of tribal authorities in determining citizenship rights. Whether authority existed for the entertainment of such appeals is a matter of serious doubt. The government of the United States found it necessary, as a condition precedent to the allotment of the tribal property among the members of the tribes, to provide a means for accurately ascertaining as far as possible who were justly entitled to be treated as members and participate in the distribution of the tribal property.

Under the act of June 10, 1896 (29 Stat. 339, c. 398), the Commission to the Five Civilized Tribes was given jurisdiction to hear and determine the application of all persons for citizenship in any of the Five Civilized Tribes. The existing rolls of the tribes were confirmed, though this confirmation was not final. The jurisdiction of the Commission at that time, therefore, did not extend to the striking of names from the tribal rolls, but only to hearing the application of those whose application for citizenship had either been denied or not acted upon by the tribal authorities.

Provision was made for an appeal from the decision of the Commission to the Five Civilized Tribes to the United States courts in the Indian Territory.

From time to time the jurisdiction conferred upon the Commission to the Five Civilized Tribes in the matter of the determination of citizenship matters, and as to the persons who should be enrolled, was enlarged. The rolls thus made were to be subject to the approval of the Secretary of the Interior, and when approved by him to become final. The authority of the Commission and the Secretary expired on March 4, 1907. The constitutionality of this method of determining the rights of citizenship in the various tribes was sustained.¹

§ 20. **Cherokees.**—Under the treaty of 1866 the freedmen of the Cherokee Nation, who resided in the Cherokee Nation, or removed thereto within six months after the ratification of the treaty and resided therein, were entitled to all the benefits of membership in the Cherokee tribe. Much litigation has arisen over who were freedmen entitled to participate under the benefits of this agreement. Under recent decisions of the Supreme Court of the United States it has been definitely settled that only those freedmen who actually resided in the Cherokee Nation at the time mentioned, or returned within the time prescribed, were entitled to the benefits of section 9 of the Cherokee Treaty of August 11, 1866.² While Cherokee freedmen who came within the requirements of the act were mem-

¹ *Stephens v. Cherokee Nation*, 174 U. S. 445, 19 Sup. Ct. 722, 43 L. Ed. 1041; *Wallace v. Adams*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547; *Dick v. Ross*, 6 Ind. T. 85, 89 S. W. 664; *Wallace v. Adams*, 6 Ind. T. 32, 88 S. W. 308; *Dukes v. Goodall*, 5 Ind. T. 145, 82 S. W. 702; *Dawes v. Cundiff*, 5 Ind. T. 47, 82 S. W. 228; *Dawes v. Benson*, 5 Ind. T. 50, 82 S. W. 1141; *Dawes v. Harris*, 5 Ind. T. 53, 82 S. W. 1142.

² *United States ex rel. Lowe v. Fisher*, 223 U. S. 95, 32 Sup. Ct. 196, 56 L. Ed. 364; *Cherokee Nation & United States v. Whitmire*, 223 U. S. 108, 32 Sup. Ct. 200, 56 L. Ed. 370; *United States ex rel. Turner v. Fisher*, 222 U. S. 204, 32 Sup. Ct. 87, 56 L. Ed. 105.

bers of the tribe for all practical purposes, they were enrolled upon separate rolls as freedmen.

Citizens by intermarriage with members of the Cherokee Tribe were duly enrolled by the Commission to the Five Civilized Tribes, but were held by the Supreme Court of the United States not to be entitled to participate in the allotment of the lands to members of the tribe.³

The final roll of the Cherokees by blood is made under the Cherokee Supplemental Agreement (Act July 1, 1902, c. 1375, § 25, 32 Stat. 720) as of September 1, 1902. The Act of Congress of April 26, 1906 (34 Stat. 137, c. 1876), directed the enrollment of "children who were minors living March 4, 1906, whose parents" had been enrolled as members of the Cherokee Tribe of Indians. A number of Cherokees assailed the constitutionality of this act upon the ground that the Cherokee Agreement determined those who were to participate in the final division of the property and Congress could not add to this list the name of any other person or persons to participate in the division of the same. The Supreme Court of the United States denied this contention and held the Act of April 26, 1906, constitutional and valid.⁴

Delawares residing among the Cherokees were, under the judgment of the Supreme Court of the United States, enrolled and received allotments, as did Cherokees by blood.⁵

The final Cherokee roll as made up is divided into: Cherokees by blood; Cherokees by blood, minor children, enrolled under the Act of April 26, 1906; Delaware Cherokees; Cherokees by intermarriage; Cherokee freedmen; Cherokee freedmen, minor children, enrolled under the Act of April 26, 1906.

³ Cherokee Intermarriage Cases, 203 U. S. 76, 27 Sup. Ct. 29, 51 L. Ed. 96.

⁴ Gritts v. Fisher, 224 U. S. 640, 32 Sup. Ct. 580, 56 L. Ed. 928.

⁵ Delaware Indians v. Cherokee Nation, 193 U. S. 127, 24 Sup. Ct. 342, 48 L. Ed. 646.

As above noted the Cherokees by intermarriage were not permitted to participate in the division of the tribal lands, but all other enrolled members and freedmen were permitted to participate.

The final roll of the Cherokees also shows the age, sex, and quantum of Indian blood of the member of the tribe, with his age calculated to September 1, 1902; but the ages of the minor children enrolled under the Act of April 26, 1906, were calculated to March 4, 1906.

§ 21. **Choctaws and Chickasaws.**—The final rolls of membership, and freedmen, of the Choctaw and Chickasaw Tribes, as made and approved by the Secretary of the Interior, included those members of the tribes, and freedmen, living on the 25th day of September, 1902, and duly enrolled Mississippi Choctaws. If the name of a member, or freedman, appeared on the roll, who in fact died prior to said date, his heirs were not entitled to participate in the distribution of the lands of the tribe. If such member was living on September 25, 1902, but died subsequent thereto, then an allotment was made in his name, and descended to his heirs under the laws of descent and distribution of Arkansas, in force in the Indian Territory. This was the status of membership under the Choctaw-Chickasaw Supplemental Agreement ratified by Choctaws and Chickasaws September 25, 1902.

By the provisions of section 41 of this agreement, all persons identified by the Commission as Mississippi Choctaws were permitted at any time within six months after their identification to make bona fide settlement in the Choctaw and Chickasaw country, and, upon proof of such settlement, to be enrolled by the Commission, and, upon such enrollment, entitled to allotment. Prior to this agreement Mississippi Choctaws were not permitted to participate in the allotment of the tribal lands of the Choctaw and Chickasaw Tribes.* Provision was also made in the Sup-

* *Ikard v. Minter*, 4 Ind. T. 214, 69 S. W. 852.

plemental Agreement for the enrollment of and allotment to Choctaw and Chickasaw freedmen of forty acres of land each. Prior to this time the Chickasaw freedmen had had no interest in the lands of the Choctaw and Chickasaw Nations.⁷

The Act of March 3, 1905 (33 Stat. 1071, c. 1479), directed the Secretary to add to the roll children born subsequent to September 25, 1902, and prior to March 4, 1905, and who were living on said latter date, to citizens by blood of the Choctaw and Chickasaw Tribes of Indians. The members so added to the roll were thus entitled to participate in the distribution of tribal lands. On April 26, 1906, the Secretary was again directed to add to the roll for participation in the final distribution of the property of the tribes the names of "children who were minors living March 4, 1906, whose parents had been enrolled as members" of the Choctaw or Chickasaw Tribes. The Secretary not only made a roll of the children of members of the tribe under the Acts of March 3, 1905, and April 26, 1906, but also made a roll of the freedmen of the two tribes under both of said acts, and allotments were made to both classes. Members of the Choctaw or Chickasaw Tribes by intermarriage were entitled to participate in the distribution of the tribal property. The membership rolls of those entitled to participate in the distribution of the lands of the Choctaw and Chickasaws were made up under the titles of: Final roll of Choctaws by blood; new-born Choctaws by blood; minor Choctaw citizens by blood; citizens by marriage; Choctaw freedmen; minor Choctaw freedmen; Mississippi Choctaws; new-born Mississippi Choctaws; Mississippi Choctaws enrolled under Act April 26, 1906; Chickasaws by blood; new-born Chickasaws by blood; minor Chickasaws by blood; Chickasaws by intermarriage; and Chickasaw freedmen.

The rolls prepared by the Commission to the Five Civi-

⁷ United States v. Choctaw Nation and Chickasaw Nation, 193 U. S. 115, 24 Sup. Ct. 411, 48 L. Ed. 640.

lized Tribes, and approved by the Secretary of the Interior, show the age, sex, and quantum of Indian blood of each member of the tribe. The ages as shown on this roll are as calculated to September 25, 1902. The age of minor children enrolled under the Act of March 3, 1905, is calculated to March 4, 1905. This roll is entitled "Final Roll of New-Born Choctaws by Blood." The minor Choctaws enrolled under the Act of April 26, 1906, are enrolled under the title "Final Roll of Minor Choctaw Citizens by Blood," and their age is calculated to March 4, 1905.

§ 22. **Creeks.**—Under the original Creek Agreement the members of that tribe entitled to participate in allotment were those living on April 1, 1899, including freedmen, and the children born to such members up to and including the 1st day of April, 1900. Under the Supplemental Agreement there was added to those persons to be enrolled for participation in the lands of the tribe all children born to enrolled citizens subsequent to July 1, 1900, and up to and including May 25, 1901. Under the Act of March 3, 1905, there were enrolled "children born subsequent to May 25, 1901, and prior to March 4, 1905, and living on said latter date" to enrolled citizens of the Creek Tribe.

Under section 2 of the Act of April 26, 1906, there was further added to the final roll "children who were minors living March 4, 1906," whose parents had been enrolled as members of the Creek Tribe.

The final enrollment records of the members and freedmen of the Creek Tribe, all of whom were entitled to and did participate in the allotment of the lands of the tribe, are subdivided as follows: Final roll Creeks by blood; Creeks by blood, new-born, under Act March 3, 1905; Creeks by blood, minor children, under Act April 26, 1906; Creek freedmen; Creek freedmen, new-born, under Act March 3, 1905; and Creek freedmen, minor children, under Act April 26, 1906.

The rolls do not show the date to which the age of those members appearing upon the Creek tribal rolls are calcu-

lated. To calculate the present age of an allottee of the Creek tribe, it is necessary to secure a certified copy of the census card showing the date of enrollment.

§ 23. **Seminole.**—Under the treaty of 1866 Seminole freedmen were given all the rights, privileges and immunities of members of the Seminole Tribe of Indians, including the right to participate in the division of the tribal lands. Under the Seminole Agreement only those Seminoles by blood, and freedmen, living on December 31, 1899, were entitled to participate in the distribution of the Seminole lands; but by the Act of March 3, 1905, the Secretary was directed to enroll "Indian children born prior to March 4, 1905, and living on said latter date to citizens of the Seminole Tribe whose enrollment has been approved by the Secretary of the Interior; and to enroll and make allotments to such children giving to each an equal number of acres of land," etc. The final Seminole roll is subdivided as follows: Seminoles by blood; Seminole freedmen; Seminoles by blood, minor children, under Act March 3, 1905; and final roll Seminole freedmen under Act March 3, 1905. Age of Seminole allottees by blood and Seminole freedmen is calculated to December 31, 1899. Age of minor children, both Seminoles by blood and freedmen enrolled under Act March 3, 1905, calculated to date of the act under which they are enrolled.

§ 24. **Striking names from tribal rolls.**—The Secretary of the Interior, on the last day on which he had the right to act in reference to tribal enrollment, struck from the tribal rolls of the various tribes names of a great many persons appearing thereon as members or freedmen of one or more of the tribes. In addition to the names thus stricken from the roll, the Secretary had, from time to time, stricken the names of other persons from the roll for various reasons, chiefly, however, because the person had, as he asserted, died prior to the date as of which the rolls were to be made, and that his heirs were therefore not entitled

to participate. The Supreme Court of the United States held that the Secretary had no right to strike the name of any person appearing upon any of the tribal rolls therefrom without notice to the party and opportunity to be heard.⁸ A mandamus was therefore granted, directing the Secretary to restore the names of Goldsby and others, parties to that proceeding, upon the rolls. In a subsequent proceeding the Secretary answered that the enrollment of the person whose name had been stricken was procured by fraud, and that such person was not in fact entitled to enrollment. A demurrer was interposed to this answer and overruled. The Supreme Court of the United States held that, while the Secretary had no right to strike the name from the rolls without notice, the granting of the writ of mandamus was discretionary,⁹ and that it would not be granted to require the restoring of the name to the roll, where the party had, under the pleadings, secured his enrollment by fraud. Very few cases involving the right of the Secretary to strike the name of an enrolled member from the rolls remain undisposed of.

§ 25. Tribal membership other than Five Civilized Tribes.—The allotment agreements and statutes under which the lands of other than the Five Civilized Tribes were allotted seldom contained any provision for the making of tribal membership rolls. Such rolls were usually made by the Secretary of the Interior, under his general authority over Indian tribes and Indian tribal property.

The agreement with the Kiowa, Comanche and Apache Tribes provides for the enrollment of certain intermarried whites as members of the tribe.

The Kickapoo Agreement provides that allotment shall be made to every member, native and adopted, of the Kickapoo Tribe of Indians.

⁸ *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249, 20 Sup. Ct. 62, 53 L. Ed. 168.

⁹ *Sorrels v. Jones*, 26 Okl. 569, 110 Pac. 743.

The Kansas or Kaw Agreement provides that the Secretary shall use as the basis of allotment the roll of members of said tribe then in the office of the United States Indian agent at the Osage Indian Agency as it existed December 1, 1901, including descendants born to enrolled members of the tribe between December 1, 1901, and December 1, 1902.

Under the Osage Agreement the roll of the Osage Tribe as shown by the records of the United States Indian agent in the office of the Osage Agency, as it existed on the 1st day of June 1906, with the addition thereto of children born to enrolled members of the tribe between June 1, 1906 and July 1, 1907, including the children of Osages intermarried with whites, should constitute the final membership roll of the Osage Tribe.

The Quapaw enrollment for allotment purposes seems to have been prepared by the council of the tribe.

Under the Confederated Peoria Agreement, allotments were made to the Wea, Peoria, Kaskaskia, Piankeshaw and Western Miami Indians upon a membership list furnished by the chiefs of the tribe respectively, and approved by the Secretary of the Interior.

Members of scattering tribes of Indians located at the various Indian agencies in Oklahoma and the Indian Territory were in many instances permitted to take allotments among the Indians of the tribe with which they were affiliated, and are, for all ordinary purposes, treated and considered as members of the tribe out of whose land their allotments are carved.

CHAPTER 6

NATIONAL AND STATE CITIZENSHIP OF MEMBERS OF
INDIAN TRIBES

- § 26. National citizenship.
- 27. Effect of conferring national citizenship.
- 28. State citizenship.

§ 26. National citizenship.—The general rule has been to regard members of Indian tribes, before made citizens of the United States, as wards of the national government, and incapable of making binding contracts or lawful disposition of their property. The ordinary reservation Indian was kept by the Indian agent within the limits of his reservation, and made no contracts with any other person than a member of the tribe, without the approval of the Indian agent in charge. Allotment of Indian reservations being a step toward civilization and independence of the members of the tribe, allotment agreements or statutes provide for the member of the tribe, upon his taking his pro rata share of the tribal lands, becoming a citizen of the United States. Some of the allotments acts and agreements contained a further provision that such allottee should thereupon become subject to the laws of the state, both civil and criminal, in which he resided.

The Five Civilized Tribes were excluded from the General Allotment Act.¹ Section 6 of that act declares every Indian born within the United States, to whom an allotment is made, to be a citizen of the United States, with all the rights, privileges and immunities thereof.

The act of March 3, 1893 (27 Stat. 645, c. 209), creating the Dawes Commission and authorizing it to negotiate with the Five Civilized Tribes for the allotment of their tribal domain in severalty,² declared that upon allotment the individual

¹ Act Feb. 8, 1887, c. 119, 24 Stat. 388. See § 904.

² See §§ 344 to 346.

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members of the tribes should be deemed in all respects citizens of the United States. Further reference was made to the matter of citizenship in some of the allotment agreements made with the tribes. Prior to the completion of these agreements the conditions had become such in the Indian Territory that it was deemed necessary that national citizenship should be conferred upon the members of the Five Civilized Tribes, without awaiting the allotment of their lands in severalty. The necessity for this course was fully set out in Committee Report 2483 made to the Fifty-Sixth Congress, Second Session, on the 28th day of February, 1901. Congress amended section 6 of the general allotment act by inserting, at the appropriate place after the words "civilized life," "every Indian in the Indian Territory."³ The result of this amendment was to confer upon every Indian in the Indian Territory all the rights, privileges and immunities of national citizenship from the date of the approval thereof by the President of the United States.

§ 27. **Effect of conferring national citizenship.**—Numerous controversies arose over the effect of the act of March 3, 1901 (31 Stat. 1447, c. 868), conferring citizenship upon every Indian in the Indian Territory. The Supreme Court of the United States had interpreted the citizenship conferred upon allottees of other than the Five Civilized Tribes by section 6 of the General Allotment Act as strongly presumptive, if not conclusive, of the intention of Congress to abandon its guardianship over the members of Indian Tribes upon whom it had conferred the privileges and immunities of citizenship.⁴

Many views of the effect of this act were urged and are reflected in the litigation over Indian lands in the Five Civilized Tribes in the period immediately following statehood. It was even insisted by some that the effect of con-

³ See § 904.

⁴ In re Heff, 197 U. S. 488, 25 Sup. Ct. 506, 49 L. Ed. 848.

ferring citizenship was to remove restrictions upon alienation. The more general view was that it did not remove restrictions, but that it placed such allottees, so far as the power and authority of Congress was concerned, upon the same basis as that of other citizens of the United States who were not members of an Indian tribe or nation. Some of these views found partial expression in the case of *United States v. Allen* (C. C.) 171 Fed. 907, and 179 Fed. 15, 103 C. C. A. 1. The Supreme Court of the United States, when the matter came before it, held that Congress did not, by conferring citizenship upon allottees of the Five Civilized Tribes, deprive itself of authority to continue or extend restrictions upon alienation of the allotted or inherited lands of the members of the tribes.⁵ Whether Congress can, where all restrictions have expired, impose new restrictions upon the alienation or disposition of the lands of allottees of the Five Civilized Tribes, has never been presented to or considered by the Supreme Court of the United States. It would seem that the authority of Congress to do so would be much more objectionable from a constitutional standpoint than merely to extend restrictions which already exist.⁶ In the one instance Congress has only partially severed its relation of guardian, and in the other has completely severed the same. One means a continuance of that which exists, and the other a return to that which had been abandoned. The Supreme Court held⁷ that conferring the rights of citizenship upon allottees of the Five Civilized Tribes did not deprive the United States of the right to institute and maintain in its name a suit to cancel a conveyance of such allotted lands, upon the ground that such conveyance was made in violation of the restrictions imposed by Congress upon the right to alienate by the

⁵ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

⁶ *Bartlett v. United States* (C. C. A.) 203 Fed. 410.

⁷ *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 364, 56 L. Ed. 820.

allottee. In view of these decisions, it would seem difficult to state with accuracy the full effect upon the rights of allottees of the Five Civilized Tribes of making them citizens of the United States.

Allottees of other than the Five Civilized Tribes in the state of Oklahoma had become citizens of the United States under section 6 of the General Allotment Act of 1887, except the Osages. The Peorias and Sacs and Foxes were originally excluded from the General Allotment Act, but subsequently the provisions of section 6 thereof were extended to the allottees of these tribes.

§ 28. **State citizenship.**—By section 2 of the Oklahoma enabling act,⁸ all persons who were citizens of the United States or members of any Indian nation or tribe were authorized to participate in the organization of the state government, and under section 3 of the same act, it was required that the Constitution of the new state should make no distinction in civil or political rights on account of race or color. Therefore Indians residing within the territorial limits of the state of Oklahoma were, by the terms of the enabling act and its acceptance, made citizens of the state.⁹ The allottees of the Five Civilized Tribes of Indians are therefore citizens of the United States and of the state of Oklahoma.¹⁰

Allottees of other than the Five Civilized Tribes and Osages in the state of Oklahoma became citizens of the United States pursuant to section 6 of the General Allotment Act of 1887; the Peorias, Sacs and Foxes under an

⁸ Act June 16, 1906, c. 3335, 34 Stat. 267.

⁹ *Minor v. Happersett*, 21 Wall. 162, 22 L. Ed. 627; *Boyd v. Nebraska ex rel. Thayer*, 143 U. S. 175, 12 Sup. Ct. 375, 36 L. Ed. 103; *Bolln v. Nebraska*, 176 U. S. 83, 20 Sup. Ct. 287, 44 L. Ed. 382.

¹⁰ *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *United States v. Ashton* (C. C.) 170 Fed. 509; *United States v. Leslie* (C. C.) 167 Fed. 670; *United States v. Hall* (D. C.) 171 Fed. 214; *United States v. Allen* (C. C.) 171 Fed. 907; *Id.*, 179 Fed. 15, 103 C. C. A. 1.

extension of section 6 of the General Allotment Act of 1887 to the allottees of these tribes.

The requirement by Congress and the acceptance by the state that "every member of any Indian nation or tribe located within the state should be permitted to participate in the organization and conduct of the government of the state" conferred upon all such Indians citizenship in the state and in the United States.

Allotments to members of the various Indian tribes in Oklahoma had been substantially completed at the time of the approval of the Act of May 8, 1906 (34 Stat. 182, c. 2348), and consequently at the time of the admission of Oklahoma to statehood.

CHAPTER 7

ALLOTMENT AND PASSING OF TITLE

- § 29. Selection.
- 30. Cancellation of allotments.
- 31. Allotment certificate.
- 32. Patent.
- 33. Act of April 26, 1906, vesting title in heirs or assignee.
- 34. Résumé of transactions involved in passing title to allottees.

§ 29. **Selection.**—The tribal lands of the Five Civilized Tribes were allotted to the members thereof under allotment agreements made with the tribes respectively by the Commission to the Five Civilized Tribes. While these various allotment agreements differ in detail as to preference rights in the selection of allotment, the amount of land to be allotted, etc., the procedure on allotment was, as to all of the tribes, substantially identical, and may be described in general terms, as it possesses only historical interest, and is of little practical importance at the present time. The matter of membership in the Seminole Tribe being less complicated than in the other tribes, and that tribe having been the first to enter into an allotment agreement, the lands thereof were the first to be allotted.

Next in order was the Creeks, and the Cherokees, Choc-taws and Chickasaws somewhat later. Land offices were established at various places and a designated member of the Commission placed in charge thereof. The procedure in the matter of the selection of allotments was as follows: A member of a tribe, desiring to assert his preference right to select a given tract or parcel of land in allotment, appeared at the land office and presented his selection of the same in writing. This selection or application contained a showing either that the land sought to be allotted was unappropriated public domain, or that the applicant was the owner of the improvements thereon, and, therefore, had

the preference right of selecting the same in allotment. Under the allotment agreements made with each of the tribes the preference right was given to each and every member of the tribe of selecting in allotment the lands upon which he owned the improvements, provided, of course, he could not select more than his pro rata share of the land of the tribe. Any member of the tribe desiring to assert his preference right to select such previously selected tract in allotment might do so by appearing before the Commission within nine months after the original selection, and filing a contest denying the right of the party first making the selection to take the land in allotment, and asserting his own superior right to select the same. Thereupon summons was issued and served upon the party making the first selection, and the case was tried before the Commission to the Five Civilized Tribes, as contests in the land offices are ordinarily tried, and a judgment entered adjudging which of the parties was entitled to take the land in allotment. From this judgment an appeal could be prosecuted to the Commissioner of Indian Affairs, and from the Commissioner of Indian Affairs to the Secretary of the Interior.

In making his selection the member of the tribe does all that is required of him to perfect his title. Such selection, therefore, and the acceptance of the same by the departmental officials, operates to pass the equitable title to the allottee and to segregate the lands selected from tribal holdings and convert the same to individual ownership.¹ All proceedings subsequent to selection, completing segrega-

¹ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Doe ex dem. Mann v. Wilson*, 23 How. 457, 16 L. Ed. 584; *French v. Spencer*, 21 How. 228, 16 L. Ed. 97; *Best v. Polk*, 18 Wall. 112, 21 L. Ed. 805; *Lamb v. Davenport*, 18 Wall. 307, 21 L. Ed. 759; *Crews v. Burcham*, 1 Black, 352, 17 L. Ed. 91; *Ryan v. Carter*, 93 U. S. 78, 23 L. Ed. 807; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *Oliver v. Forbes*, 17 Kan. 113; *Clark v. Lord*, 20 Kan. 300; *United States v. Torrey Cedar Co. (C. C.)* 154 Fed. 263; *United States v. Moore (C. C.)* 154 Fed. 712; *Thomason v. Wellman & Rhoades (C. C. A.)* 206 Fed. 895.

tion and passing of legal title, relate back to and are effective as of date of selection.*

§ 30. Cancellation of allotments.—Enrollment as a member of the tribe was a condition precedent to allotment, under the allotment agreements with each of the Five Civilized Tribes. In a few instances the name of enrolled members were stricken from the rolls, after they had made their selection in allotment, and sometimes after patents had been issued. The more numerous of the cases in which this was done were those in which lands had been allotted in the name of a deceased member of a tribe, or the heirs of a member, after his death; that is to say, the rolls were to be closed as of a given date. Lands were allotted either in the name of or to the heirs of members who died subsequent to that date and before allotment. The Secretary of the Interior claimed that the enrollment of members of the tribe had been fraudulently secured upon the proof that they had died subsequent to the date fixed, which would entitle their heirs to participate, when in fact they had died prior to such date, and the heirs were not entitled to participate. The right of the Secretary to cancel an allotment was very thoroughly considered by the Supreme Court of Oklahoma in the case of *Sorrels v. Jones et al.* In that case the Secretary, without notice, canceled the allotment on the ground that the member of the tribe in whose name the same had been made died prior to the 25th day of September, 1902, and that his heirs were, therefore, not entitled to have an allotment made in his name for their use and benefit. The court held that the Secretary had juris-

* *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *De Graffenried v. Iowa Land & Trust Co.*, 20 Okl. 687, 95 P. 624; *Sorrels v. Jones*, 26 Okl. 569, 110 Pac. 743; *Hooks v. Kennard*, 28 Okl. 457, 114 Pac. 744; *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792; *Irving v. Diamond*, 23 Okl. 325, 100 Pac. 557.

diction, upon proper investigation, to cancel the allotment; that, notwithstanding the cancellation was made without notice, it was not thereby rendered a nullity.³

While the court did not directly pass upon the question, it is perhaps a fair inference from the opinion that if the parties claiming title by virtue of a conveyance from the heirs of the person in whose name the land had been allotted had been able to show that the allotment was canceled without notice to the heirs, and that the party was in fact living on the 25th day of September, 1902, the court would hold that the Secretary's cancellation of the allotment was invalid.

§ 31. Allotment certificate.—At the expiration of nine months from the date of selection, if no contest had been filed, an allotment certificate was issued to the person who had selected the land in allotment. Under section 23 of the Choctaw-Chickasaw Supplemental Agreement (Act July 1, 1902, c. 1362, 32 Stat. 643) the allotment certificate is made conclusive evidence of the right of the allottee to the tract of land described therein. Section 21 of the Cherokee Agreement (Act July 1, 1902, c. 1375, 32 Stat. 717) contains a similar provision. No direct provision is made under the Creek (Act June 30, 1902, c. 1323, 32 Stat. 500) or Seminole Agreements (Act July 1, 1898, c. 542, 30 Stat. 567) for the issuance of allotment certificates, but certificates were issued to allottees of both of these tribes containing a recital that the lands therein described had been allotted to the member mentioned therein as a homestead or exclusive of homestead in accordance with the facts.

It was said of these certificates that they are dual in effect, that they represent the adjudication of the special tribunal empowered to decide that the members to whom they are issued are entitled to the land, and are a convey-

³ *Sorrels v. Jones*, 26 Okl. 569, 110 Pac. 743.

ance of the right to the title to the allottee and are imperious to collateral attack.⁴

Certificates of allotment were sometimes erroneously issued, delivered and recorded before the expiration of the contest period. When an error of this character was discovered, a return of the certificate was requested, but such request was not always complied with. The issuance and recording in the office of the Commission of one of these certificates would be but a mistake or misprision of a clerk, and could hardly be considered to operate as a cloud upon the title of a person finally adjudged by the Commission to be entitled to take the land in allotment.

§ 32. **Patent.**—Allotment agreements with each of the Five Civilized Tribes provided for the issuance of a patent or patents to the allottee for the lands selected in allotment. In some of the agreements the Secretary's approval was required as a condition precedent to the delivery of the patent to the allottee. No such approval was required in the Choctaw and Chickasaw Agreements. These patents were executed by the Governor or Principal Chief of the tribe and operated to pass to the allottee the fee simple title to the lands granted. Their acceptance also operated as a relinquishment of the interest of the allottee in lands patented to other members of the tribe. The patents in each instance made reference to the act under which they were issued, doubtless for the purpose of giving public notice of the character of title passing and of the restrictions imposed upon alienation thereunder. The patent operated to pass to the allottee the full legal title and to consummate the allotment proceedings, which began with the selection of the land patented in allotment.

Restrictions on alienation, whether recited in a patent or not, do not operate to deprive the title passed thereby of its fee simple character. A restriction on alienation is not inconsistent with a fee simple title, and is not intended

⁴ *Wallace v. Adams*, 143 Fed. 716, 74 C. C. A. 540, affirmed 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547.

to diminish the estate passing, but to protect the grantee against his own improvidence.⁵

§ 33. Act of April 26, 1906, vesting title in heirs or assignee.—Section 5 of the Act of April 26, 1906, provided for the issuance of patent in the name of the allottee, whether such patent issues before or after his death. It made such patent effective, not only to pass title to the allottee if living, but if dead to pass title to the lands therein granted to his heirs or his legal assigns, as if the patent or deed had issued to the allottee during his life. It was further provided that all patents theretofore issued, where the allottee died before the same became effective, should be given like effect; that is to say, that the patent should not fail for want of a grantee, and that it should pass title to the heirs where no valid conveyance had been made, and should also pass title to the grantee where a valid conveyance had been made. The same section required that all patents to allottees of the Five Civilized Tribes should be recorded in the office of the Commissioner to the Five Civilized Tribes before delivery, and when so recorded should operate to convey the legal title, and should thereafter be delivered under the direction of the Secretary to the party entitled to receive the same.

It has been held that the provisions of this section modify section 16 of the Choctaw-Chickasaw Supplemental Agreement, so as to, in effect, substitute the words "after recording in the office of the Commissioner to the Five Civilized Tribes" in lieu of the words "after issuance of patent";⁶ that is to say, that the issuance of patent as used in section 16 of the Choctaw-Chickasaw Supplemental Agreement meant delivery thereof so as to pass title, and that this section as to all of the tribes makes recording the equivalent of issuance and delivery of patent.

⁵ *Libby v. Clark*, 118 U. S. 250, 6 Sup. Ct. 1045, 30 L. Ed. 133; *Schrimscher v. Stockton*, 183 U. S. 290, 22 Sup. Ct. 107, 46 L. Ed. 203; *Schrimscher v. Stockton*, 58 Kan. 758, 51 Pac. 276.

⁶ *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811.

§ 34. Résumé of transactions involved in passing title to allottee.—The selection of the allotment is the inception of the allottee's title. Upon the acceptance of the selection an entry is made upon the records of the officer in charge of allotment, and, in the case of the Five Civilized Tribes, of the Commission to the Five Civilized Tribes, of the selection and setting apart of said land to said allottee. Prior to the issuance of patent a certified copy of this allotment designation may be obtained for the purpose of showing that the same has been selected in allotment and such selection approved. Where allotments of the surface were made under the Act of June 28, 1898 (30 Stat. 497, c. 517), a certificate of selection was issued. The next step in the process of perfecting the allottee's title is an allotment certificate, or, under the General Allotment Act, a trust patent. The allotment certificate is conclusive evidence of the right of the allottee to the title to the lands allotted, and the trust patent is of the same effect, subject to such legislation as may have been enacted conferring upon the Secretary of the Interior authority to cancel trust patents. The issuance and delivery of the patent is the final act, vesting in the allottee a fee simple title. The selection of the land in allotment, and the acceptance of such selection by the allotting officer, and the issuance of the allotment certificate or trust patent, vest in the allottee a full equitable title, to which the legal title is added by the issuance of patent.

CHAPTER 8

ALLOTTEES AND ALLOTTED LANDS

- § 35. Absentee Shawnee and Citizen Pottawatomie.
- 36. Cherokee.
- 37. Cheyenne and Arapaho.
- 38. Creek.
- 39. Chickasaw.
- 40. Choctaw.
- 41. Iowa.
- 42. Kansas or Kaw.
- 43. Kickapoo.
- 44. Kiowa, Comanche and Apache.
- 45. Modoc.
- 46. Osage.
- 47. Otoe and Missouri.
- 48. Ottawa.
- 49. Pawnee.
- 50. Peoria.
- 51. Ponca.
- 52. Quapaw.
- 53. Sac and Fox.
- 54. Seminole.
- 55. Seneca.
- 56. Shawnee.
- 57. Tonkawa.
- 58. Wichita and Affiliated Bands.
- 59. Wyandotte.

§ 35. Absentee Shawnee and Citizen Pottawatomie.—Agreements for the allotment of the reservations of the Absentee Shawnees and Citizen Pottawatomies, identical in language, were entered into and approved by Act of Congress of March 3, 1891 (26 Stat. 1016, 1019, c. 543). This agreement contained a cession by said tribes of all of their right, title, and interest in and to their reservations, respectively, reserving out of the lands so ceded, however, an allotment for each member of the tribe.

Under the Pottawatomie Agreement 215,679.42 acres were allotted to 1,489 Pottawatomies, and under the Absentee Shawnee Agreement 70,791.47 acres were allotted to 563 members of the Absentee Shawnee tribe, 510.63 acres were reserved for government purposes, and the residue

opened to settlement by proclamation of the President, September 18, 1891.

§ 36. **Cherokee.**—There were allotted, under the Cherokee Allotment Agreement, 4,346,793.29 acres of land to 41,698 Indians and freedmen. Up to May 27, 1908, there were 41,511 allotments, distributed as follows: Cherokee by blood, 36,390; Cherokee freedmen, 4,925; Delaware Cherokee, 196.

§ 37. **Cheyenne and Arapaho.**—Allotments in the Cheyenne and Arapaho reservation were made to members of the Cheyenne and Arapaho tribes under an allotment agreement approved March 3, 1891. The reservation lands of these two tribes were ceded to the United States, subject to the allotment to each and every member of the tribe of 160 acres of land.

Under this agreement 528,789 acres were allotted to 3,331 Indians, 231,828.55 acres were reserved for Oklahoma school purposes and 32,343.91 acres for military, agency, mission, and other purposes, and the residue, 3,500,562.05 acres, was opened to settlement by the President's proclamation of April 12, 1892.

§ 38. **Creek.**—There have been allotted, under the original and supplemental Creek Agreements, to 18,716 allottees, 2,999,360 acres, and sold by the Secretary of the Interior, 62,167 acres.

Up to May 27, 1908, the persons to whom allotments had been made under the Creek Agreements were distributed as follows: Creeks by blood, 12,895; Creek freedmen, 6,807.

§ 39. **Chickasaw.**—There were allotted to Chickasaw allottees under the Choctaw-Chickasaw Supplemental Agreement, pursuant to the original agreement, 3,801,236 acres of land up to May 27, 1908, to 10,955 allottees. Up to said date, the Chickasaw allottees were distributed as follows: Chickasaws by blood, 5,684; Chickasaw by intermarriage, 623; Chickasaw freedmen, 4,670.

There had been sold of the unallotted lands, to January 1, 1913, 519,975 acres, and there remain undisposed of 339,440 acres, including 7,839 acres segregated for coal and asphalt purposes.

§ 40. **Choctaw.**—There were allotted to Choctaw allottees under the Choctaw-Chickasaw Supplemental Agreement, pursuant to the Atoka, or original Choctaw-Chickasaw, Allotment Agreement, 4,303,666 acres. Up to May 27, 1908, the Choctaw allottees were distributed as follows: Choctaws by blood, 19,036; Choctaws by intermarriage, 1,585; Mississippi Choctaws, 1,356; Choctaw freedmen, 5,994.

The government had sold at public auction, up to January 1, 1913, 335,230 acres of unallotted lands. There are unsold and unallotted 2,273,327 acres, including 424,744 acres segregated for coal and asphalt purposes.

§ 41. **Iowa.**—The lands of the Iowa Tribe of Indians were allotted under the provisions of an act to ratify and confirm agreements with the Sac and Fox Nations or Tribes of Indians and the Iowa Tribe of Indians of Oklahoma Territory, approved February 18, 1891.

Under this agreement there were allotted 8,605 acres to 108 Indians, 20 acres were retained in common for church, school, and other purposes, and the residue opened to settlement by the President's proclamation on September 18, 1891.

§ 42. **Kansas or Kaw.**—The Kaw reservation was acquired by purchase from the United States under Act of Congress approved June 5, 1872 (17 Stat. 228, c. 309). The reservation was allotted under the Act of Congress approved July 1, 1902 (32 Stat. 636, c. 1361); 99,644 acres being allotted to 247 Indians.

§ 43. **Kickapoo.**—An agreement for the allotment of the Kickapoo tribal lands was approved and ratified by Act of Congress of March 3, 1893. By this agreement the Kickapoos ceded to the United States, subject to the reservation

of an allotment for each member of the tribe, all tribal lands. Under this agreement 22,650 acres were allotted 280 Indians, 479.72 acres were reserved for agency, school and church purposes, and the remainder opened to settlement by proclamation of the President, May 18, 1895. Subsequently the Secretary of the Interior was authorized to sell 319.72 acres of the lands reserved.

§ 44. Kiowa, Comanche and Apache.—The Kiowas, Comanches and Apaches, by an agreement ratified by Congress June 6, 1900 (Act June 6, 1900, c. 813, § 6, 31 Stat. 676), ceded to the United States their reservation, with the exception of certain pasture lands, and subject to an allotment of 160 acres to be made to each member of the tribe.

Under this agreement 445,000 acres were allotted to 3,444 Indians, 11,972 acres were reserved for agency, school, religious, and other purposes, 480,000 acres were set apart as grazing land for the tribe, and 2,033,583 acres opened to settlement under the President's proclamation at various times. 1,841.92 acres were reserved for townsites under the Act of March 20, 1906 (34 Stat. 80, c. 1125), and an additional 82,059.52 acres were allotted to 513 Indians under the Act of June 5, 1906 (34 Stat. 213, c. 2580), and 480 acres allotted to 3 Indians under the Act of June 5, 1906, as amended by the Act of March 1, 1907 (34 Stat. 1018, c. 2285). Subsequently, and under the Act of June 25, 1910 (36 Stat. 855, c. 431), 20,498 acres were allotted to 169 Indians.

The allotments made under the Act of June 5, 1906, were to children born to duly enrolled members of either of said tribes subsequent to June 6, 1900. The allotments made under the Act of June 25, 1910, were to children born to enrolled members of the tribe subsequent to June 5, 1906.

§ 45. Modoc.—There were allotted under the General Allotment Act of 1887 and the amendment thereto of February 28, 1891 (Act Feb. 28, 1891, c. 383, 26 Stat. 794), to 68 Modoc Indians, 3,966 acres, and 8 acres were reserved for

church and cemetery purposes, 2 acres for school purposes, and 24 acres for timber.

§ 46. **Osage.**—There were allotted, under the Osage Allotment Agreement, to 2,230 Indians 2,530,484 acres, and 5,178.53 acres reserved for church, townsite and railroad purposes.

§ 47. **Otoe and Missouri.**—There were allotted under the General Allotment Act of 1887, and the amendments thereto of February 28, 1891, to 514 Indians, 128,251 acres, 720 acres were reserved for agency, school and cemetery purposes, and 640 acres were set aside for tribal use.

§ 48. **Ottawa.**—By executive authority there were allotted to 160 Ottawas 18,995 acres, under the General Allotment Act and the amendments thereto, 557.95 acres were sold pursuant to the act of March 3, 1891, and the residue, 1,587.25 acres, is still unallotted tribal domain.

§ 49. **Pawnee.**—Under an agreement approved March 3, 1893, the Pawnees ceded to the United States their tribal reservation, reserving out of the lands so ceded an allotment for each member of the tribe.

Under this agreement 112,701 acres were allotted to 820 Indians, 840 acres were reserved for school, agency, and cemetery purposes, and the residue, 169,320 acres, was opened to settlement.

§ 50. **Peoria.**—There were allotted under the General Allotment Act, pursuant to the Act of Congress of March 2, 1889 (25 Stat. 1013, c. 422), to 218 Indians 43,334 acres and the residue, 6,313.20 acres, sold under the Act of May 27, 1902 (32 Stat. 263, c. 888).

§ 51. **Ponca.**—By executive authority there were allotted to 782 Ponca Indians, out of the Ponca reservation, 100,734 acres of land, under the General Allotment Act of 1887, and there were reserved for agency, school, mission and cemetery purposes 523.56 acres, leaving unallotted and unreserved 320 acres. After the completion of the allot-

ments to the members of the Ponca tribe, Congress, by the Act of April 21, 1904 (33 Stat. 217, c. 1402), directed allotments to be made to every child born to a recognized member of the Ponca tribe prior to that date.

§ 52. **Quapaw.**—There were allotted, under the Act of March 2, 1895 (28 Stat. 907, c. 188), to 248 Indians, 56,245.20 acres of land, and 400 acres reserved for school and 40 acres for church purposes.

§ 53. **Sac and Fox.**—By the terms of an agreement entered into between the Sac and Fox Indians and the United States on the 13th day of February, 1891 (Act Feb. 13, 1891, c. 165, 26 Stat. 749), said nation ceded and relinquished to the United States all title and interest of every character in and to the reservation, with the stipulation that each and every citizen of such tribe should have the right to select in allotment one quarter section of land.

Under this agreement 87,683.64 acres of land were allotted to 548 Indians, 800 acres reserved for school and agency purposes, and the residue opened to settlement by President's proclamation on September 18, 1891.

§ 54. **Seminole.**—There have been allotted to 3,122 Seminole allottees under the Seminole Allotment Agreements 360,463 acres of land, and sold by the Secretary of the Interior 3,296 acres, leaving unallotted and undistributed 160 acres.

Up to May 27, 1908, the Seminole allottees consisted of 2,138 Seminoles by blood and 986 freedmen.

§ 55. **Seneca.**—There were allotted to 435 Seneca Indians, under the General Allotment Act, and the Act of May 27, 1902, 41,813 acres, and 104.22 reserved for government, church, and school purposes.

The Act of May 27, 1902, adopted the action of the councils of the Eastern Shawnee and of the Seneca Nations or Tribes of the Indian Territory, providing for the allotment of lands to certain minor children, and for other

purposes, passed respectively on the 2d day of December, 1901, and the 8th day of February, 1902.

§ 56. **Shawnee.**—There were allotted to 117 Shawnee Indians, under the General Allotment Act, and the Act of May 27, 1902, 12,745 acres, and 86 acres reserved for agency purposes, and the residue, 2,543 acres, sold.

The Act of May 27, 1902, adopted the action of the councils of the Eastern Shawnee and of the Seneca Nations or Tribes of the Indian Territory, providing for the allotment of lands to certain minor children, and for other purposes, passed respectively on the 2d day of December, 1901, and the 8th day of February, 1902.

§ 57. **Tonkawa.**—The Tonkawa Allotment Agreement, approved March 3, 1893, provided for an allotment to be made to each member of the tribe, and the cession of the remainder or residue of the reservation to the United States. Allotments had been made to some of the members of the Tonkawa tribe prior to the making of the allotment agreement, which was approved on March 3, 1893; 11,456 acres being allotted to 73 Indians, 160.50 acres reserved for government and school purposes, and the residue, 79,276.60 acres, opened to settlement.

§ 58. **Wichita and affiliated bands.**—The Indian Appropriation Act of March 2, 1895, approved an agreement made with the Wichita and affiliated bands for the allotment of the Wichita reservation.

Under this agreement 152,714 acres were allotted to 957 Indians, 4,151 acres reserved for agency, school, religious, and other purposes, and the residue, 586,468 acres, opened for settlement by President's proclamation of July 4, 1901.

§ 59. **Wyandotte.**—There were allotted, by executive authority, under the General Allotment Act, to 244 members of the Wyandotte Tribe of Indians 20,942 acres, 16 acres reserved for churches, leaving 534.72 acres unallotted and undisposed of.

CHAPTER 9

ALIENATION AND RESTRICTIONS THEREON

- § 60. Alienation—What constitutes.
- 61. Alienation—Restrictions on—Definition.
- 62. Alienation—When restricted.
- 63. Imposition and extension of restrictions.
- 64. Expiration of restrictions on alienation.
- 65. Removal of restrictions on alienation.
- 66. Alienation—Involuntary restrictions on.

§ 60. **Alienation—What constitutes.**—The Cherokee Allotment Agreement provides that homesteads of Cherokee allottees shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and that the surplus lands shall not be alienated by the allottee or his heirs before the expiration of five years from the date of the ratification of said act, but that lands in excess of the homestead shall be alienable in five years after issuance of patent.

The Choctaw-Chickasaw Supplemental Agreement provides that the homestead of the allottees of the Choctaw and Chickasaw Tribes, and the allotment of the Choctaw and Chickasaw freedmen shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and that surplus lands shall be alienable after issuance of patent, etc.

The Supplemental Creek Agreement (Act June 30, 1902, c. 1323, § 16, 32 Stat. 503) provides that lands allotted to citizens shall not be alienated by the allottee or his heirs before the expiration of five years from the approval of such Supplemental Agreement, except upon approval of the Secretary of the Interior. The homestead of Creek allottees is made inalienable and free from incumbrance for twenty-one years from date of deed; but if issue born subsequent to May 25, 1901, does not survive the allottee, he may dispose of such homestead by will free from the limitations imposed in the allotment act, and if he does not so dispose

of same the homestead descends to his heirs free from restrictions upon alienation.

The provision of the Seminole Agreement is that all contracts for sale, disposition or incumbrance of any part of any allotment made prior to date of patent shall be void.

The provision contained in the General Allotment Act is, in substance, that quoted from the Seminole Agreement.

Without referring to the provisions of the other allotment agreements, it will be observed that the controlling words in most cases in the matter of disposition of lands are "alienable" and "inalienable." These words, as they are found in the various allotment agreements and statutes, are generally used in the broadest sense, and include every transaction by which allotted lands, or any interest therein, pass from one person to another.¹

It has been held that a will is an alienation,² and that leases³ and mortgages⁴ are a pro tanto alienation, within the meaning of the words used in allotment agreements and allotment acts.

Where lands are declared to be alienable, without any words of qualification or limitation, they are subject to all manner of disposition, voluntary and involuntary; and likewise, where lands are declared to be inalienable, they are not subject to disposition by sale, voluntary or involuntary, mortgage, lease, or devise, unless such modified form of disposition is specially authorized.⁵

¹ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Hayes v. Barringer*, 168 Fed. 221, 93 C. C. A. 507; *Frame v. Bivens* (C. C.) 189 Fed. 785; *Eldred v. Okmulgee Loan & Trust Co.*, 22 Okl. 742, 98 Pac. 929; *Sharp v. Lancaster*, 23 Okl. 349, 100 Pac. 578.

² *Hayes v. Barringer*, 168 Fed. 221, 93 C. C. A. 507; *Taylor v. Parker*, 33 Okl. 199, 126 Pac. 573.

³ *Eldred v. Okmulgee Loan & Trust Co.*, 22 Okl. 742, 98 P. 929; *Sharp v. Lancaster*, 23 Okl. 349, 100 Pac. 578; *Whitham v. Lehmer*, 22 Okl. 627, 98 Pac. 351; *Barnes v. Stonebraker*, 28 Okl. 75, 113 Pac. 903; *Chapman v. Siler*, 30 Okl. 714, 120 Pac. 608; *Moore v. Sawyer* (C. C.) 167 Fed. 835.

⁴ *Frame v. Bivens* (C. C.) 189 Fed. 785.

⁵ See authorities cited to notes 1, 2, 3, and 4.

§ 61. Alienation—Restrictions on—Definition.—A restriction on alienation is a prohibition against disposition, usually by the allottee or his heir, of allotted or inherited lands, or a prohibition against the alienation of such lands, or a limitation upon the right of the allottee or heir to alienate, or a limitation upon the right to alienate allotted or inherited lands.

Restrictions upon alienation are sometimes applicable to involuntary, as well as voluntary, alienation. Statutes prohibiting involuntary alienation, however, more properly belong within the class commonly designated as exemption statutes.⁶ Whether a prohibition against alienation is directed against both voluntary and involuntary alienation, or voluntary alienation alone, depends upon the wording of the statute. Some statutes contain separate provisions relating to each class of alienation.

A restriction upon alienation, in the sense in which the word is used in allotment agreements and statutes, is any legal impediment to the right to alienate, and it makes no difference what form the impediment takes, if it prohibits, limits, restricts or burdens alienation, it is a restriction on alienation.⁷

§ 62. Alienation—When restricted.—As a general rule, and unless definite provision is made therefor, by statute tribal lands are not alienable, except to the United States or with their consent.⁸

⁶ *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588; *Simmons v. Mullen*, 33 Okl. 184, 122 Pac. 518; *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547.

⁷ *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578; 55 L. Ed. 738; *Williams v. Steinmetz*, 16 Okl. 104, 82 Pac. 986; *Goodrum v. Buffalo*, 7 Ind. T. 711, 104 S. W. 942; *Id.*, 162 Fed. 817, 89 C. C. A. 525; *United States v. Allen*, 179 Fed. 13, 103 C. C. A. 1; *Simmons v. Whittington*, 27 Okl. 356, 112 Pac. 1018; *Harper v. Kelly*, 29 Okl. 809, 120 Pac. 293; *Lewis v. Clements*, 21 Okl. 167, 95 Pac. 769; *Sayer v. Brown*, 7 Ind. T. 675, 104 S. W. 877; *Kelly v. Harper*, 7 Ind. T. 541, 104 S. W. 829.

⁸ *Stephens v. Cherokee Nation*, 174 U. S. 445, 19 Sup. Ct. 722, 43

On the contrary, all allotted Indian lands which are not subjected to restrictions upon alienation pass to the allottee free from such restrictions and with full power of alienation.⁹

He who would assert that tribal lands are alienable must find legislative authority therefor. He who would assert that allotted Indian lands are inalienable must be able to point to the agreement or statute which, either in express terms or by fair implication, restricts alienation. In other words, with tribal lands the rule is that they are inalienable; with allotted lands, that they are alienable.

Much misapprehension in the interpretation of the allotment agreements and statutes has arisen from the assumption that allotted lands may not be alienated without express authority to that end, while in reason and under authority the rule is the reverse; that is, that they may be alienated unless legislative authority is found expressly or by necessary implication limiting or restricting such alienation.¹⁰

L. Ed. 1041; *Flemming v. McCurtain*, 215 U. S. 56, 30 Sup. Ct. 16, 54 L. Ed. 88; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Gritts v. Fisher*, 224 U. S. 640, 32 Sup. Ct. 580, 56 L. Ed. 928; *Lewis v. Clements*, 21 Okl. 167, 95 Pac. 769; *Bledsoe v. Wortman (Okl.)* 129 Pac. 841; *Lynch v. Franklin (Okl.)* 130 Pac. 599; *Case v. Hall*, 2 Ind. T. 8, 46 S. W. 180; *Denton v. Capital Townsite Co.*, 5 Ind. T. 396, 82 S. W. 853; *Hockett v. Alston*, 3 Ind. T. 432, 58 S. W. 675; *Rogers v. Hill*, 3 Ind. T. 562, 64 S. W. 536; *Sayer v. Brown*, 7 Ind. T. 675, 104 S. W. 877; *Kelly v. Harper*, 7 Ind. T. 541, 104 S. W. 829; *United States v. Lewis*, 5 Ind. T. 1, 76 S. W. 299.

⁹ *Doe ex dem. Mann v. Wilson*, 23 How. 457, 16 L. Ed. 584; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *Stark v. Starr*, 6 Wall. 402, 18 L. Ed. 925; *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792; *McWilliams Inv. Co. v. Livingston*, 22 Okl. 884, 98 Pac. 914; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Frame v. Bivens (C. C.)* 189 Fed. 785.

¹⁰ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

§ 63. Imposition and extension of restrictions.—Restrictions on alienation of allotted Indian lands or upon the right of the allottees or their heirs to alienate are usually imposed in the agreement or statute providing for allotment. Instances are extremely rare in which an effort has been made to impose restrictions after the lands have passed to the allottee free from restrictions upon alienation.¹¹

The additional restriction of minority was imposed upon alienation by allottees of the Ottawa Tribe of Indians with the consent of the tribe and sustained by the Supreme Court of the United States.¹²

The extension of existing restrictions upon alienation by the Act of April 26, 1906, was also sustained by the Supreme Court of the United States.¹³

It will be noted in the first instance the additional restriction of minority was imposed, but with the consent of the tribe, and in the last instance there was involved only the authority of Congress to extend existing restrictions.

Restrictions, therefore, are usually imposed by agreement or statute providing for the allotment of the lands in severalty, and with the special assent of the tribal authorities while acting with reference to the tribal property. It would seem, however, that there could be little doubt of the authority of Congress to impose such restrictions upon alienation as a part of the scheme for the distribution of tribal lands without tribal consent.¹⁴

¹¹ *Bartlett v. United States* (C. C. A.) 203 Fed. 410.

¹² *Wiggan v. Conolly*, 163 U. S. 56, 16 Sup. Ct. 914, 41 L. Ed. 69.

¹³ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

¹⁴ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Smith v. Stephens*, 10 Wall. 321, 19 L. Ed. 933; *Wiggan v. Conolly*, 163 U. S. 56, 16 Sup. Ct. 914, 41 L. Ed. 69; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Taylor v. Brown*, 147 U. S. 640, 13 Sup. Ct. 549, 37 L. Ed. 313; *Goodrum v.*

Notwithstanding the decision in *Tiger v. Western Investment Company*, it seems to be a question of grave doubt whether or not Congress has the authority to impose restrictions upon alienation of allotted lands, where the same are held free from all restrictions on alienation, and the allottee is a citizen of the state and of the United States, with all the rights, privileges and immunities of such.¹⁵

§ 64. **Expiration of restrictions on alienation.**—Restrictions on alienation are frequently imposed for a given period of time, until the happening of a certain event, or during the lifetime of a given person or class of persons. A restriction upon the alienation of allotted lands for the lifetime of the allottee expires upon the death of such allottee and the land becomes immediately alienable.¹⁶

A restriction running with the land for a fixed period of time ceases with the expiration of the period named. A provision that allotted lands shall not be alienable before issuance of patent renders such lands alienable immediately upon the issuance of patent. It is sometimes difficult to determine whether a provision prohibiting alienation for a given period of time runs with the land or is personal to the allottee. Of this character is section 16 of the *Choctaw-Chickasaw Supplemental Agreement*.

If the restrictions in this section are personal, they expire with the death of the allottee. If they run with the land, they are for a fixed period of time.

The time when restrictions imposed by any provision of law expire must be determined upon a proper consideration of the language used and the surrounding context. In

Buffalo, 162 Fed. 817, 89 C. C. A. 525; *Rainbow v. Young*, 161 Fed. 836, 88 C. C. A. 653.

¹⁵ *Bartlett v. United States* (C. C. A.) 203 Fed. 410.

¹⁶ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Hoteyabi v. Vaughn*, 32 Okl. 807, 124 Pac. 63.

other words, the intention of the legislative body must be ascertained and applied.

§ 65. **Removal of restrictions on alienation.**—Congress has, sometimes by direct legislation, removed restrictions on alienation, and in other instances has directed or authorized the Secretary of the Interior to remove such restrictions under rules and regulations to be prescribed by him consistent with the congressional act. These statutes have usually been couched in language so clear and explicit as apparently to leave little room for controversy as to their meaning.

Notwithstanding this, frequent controversies have arisen over the effect of such acts. For instance, it was insisted that the provision of the Act of April 21, 1904, as follows: "All restrictions upon the alienation of the lands of all allottees of either of the Five Civilized Tribes who are not of Indian blood, except minors, are, except as to homesteads, hereby removed"—did not, when applied to the Seminoles, remove the restriction prohibiting alienation prior to the issuance of patent. Removal of restrictions does not operate to give validity to conveyances void or voidable because made when alienation was prohibited.¹⁷ It was even contended by departmental officers that this statute did not authorize the conveyance by the class of persons mentioned of allotted lands in the Choctaw and Chickasaw, Cherokee, or Creek Tribes of Indians before issuance of patent.

Similar language was used with reference to removal of restrictions upon alienation by adult nonresident Kickapoo, Shawnee, Delaware, Caddo and Wichita Indians.

A restriction upon alienation being any legal impediment to the right to alienate, a removal of all restrictions is a removal of every legal impediment to the exercise of such right.

¹⁷ *Smith v. Stephens*, 10 Wall. 321, 19 L. Ed. 933.

The result was that both the Supreme Court of the state and of the United States held that the effect of the Act of April 21, 1904, was to remove, as to the class to which it was applicable, every legal impediment to the right to alienate.¹⁸

§ 66. **Alienation—Involuntary restrictions on.**—Allotment agreements and statutes usually contain prohibitions against involuntary or enforced alienation as extensive, and sometimes more so, than the prohibitions against voluntary alienation. These provisions are designed to protect the lands of the allottee from forced sale, not only during the period for which restrictions against voluntary alienation are imposed, but from forced sale thereafter against all obligations contracted or incurred at any time before the lands become alienable.¹⁹ Some question has arisen as to whether some of these statutes are sufficiently broad to protect the allottee against a judgment for a tort as well as contract obligations.²⁰ In a general way it may be said that these statutes should be liberally construed for the protection of allotted lands against forced sale upon every character of demand that comes fairly within the terms of the prohibition or exemption. These statutes partake much of the nature of exemption statutes, and should have the same liberal interpretation given to such statutes. Particular provisions of the statutes will be considered in connection with the agreements or legislation of which they are a part.

¹⁸ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; *Frame v. Bivens* (C. C.) 189 Fed. 785; *United States v. Jacobs*, 195 Fed. 707, 115 C. C. A. 507; *Hawkins v. Oklahoma Oil Co. (C. C.)* 195 Fed. 345; *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792; *Parkinson v. Skelton*, 33 Okl. 813, 128 Pac. 131.

¹⁹ *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588; *Simmons v. Mullen*, 33 Okl. 184, 122 Pac. 518; *In re Washington's Estate* (Okl.) 128 Pac. 1079; *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547.

²⁰ *Simmons v. Mullen*, 33 Okl. 184, 122 Pac. 518.

CHAPTER 10

RESTRICTIONS ON ALIENATION—CHEROKEE LANDS

- § 67. Alienation of homestead.
- 68. Alienation of surplus lands.
- 69. Alienation of lands allotted in name of deceased member of the tribe.
- 70. Alienation—Freedmen allotments.
- 70a. Alienation—Intermarried Cherokees.
- 70b. Involuntary alienation.
- 70c. Cherokee Outlet allottees.

§ 67. Alienation of homestead.—Section 13 of the Cherokee Agreement requires “that each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead, out of said allotment, land equal in value to forty acres of the average allottable lands of the Cherokee Nation as near as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for such homestead. During the time the homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner while so held by him.”

With reference to similar language used in the Choctaw-Chickasaw Supplemental Agreement the Supreme Court of the United States said: “The period of restriction is thus definitely limited, and the clear implication is that when the prescribed period expired the lands were to become alienable; that is, by the heirs of the allottee upon his death or by the allottee himself at the end of twenty-one years.” Under the provision of this section it seems perfectly clear that the homestead allotment of the Cherokee allottee is inalienable during his lifetime, not exceeding twenty-one years, and alienable by him, if living, immediately after

the expiration of twenty-one years from date of certificate of allotment, and by his heirs immediately upon his death.¹

§ 68. **Alienation of surplus lands.**—Under section 15 of the Cherokee Agreement all land allotted to a member of the tribe except his homestead is declared to be alienable in five years after issuance of patent.² Section 14 of the same agreement provides that “lands allotted to citizens shall not in any manner whatever be incumbered, taken or sold to secure or satisfy any debt or obligation or be alienated by the allottee or his heirs before the expiration of five years from the date of ratification of this act.” Section 15 is an affirmative declaration that the surplus lands allotted to members of the tribe shall be alienable in five years after issuance of patent. Section 14 is a negative provision declaring that such lands allotted to Cherokee citizens shall not be alienated by the allottee or his heirs before the expiration of five years from the ratification of allotment agreement. The meaning of these two sections, taken together, has been the subject of much litigation. On the one hand, it has been contended that the surplus lands of a Cherokee allottee became alienable at the expiration of five years from the ratification of the Cherokee agreement; that is to say, five years from August 12, 1902. On the other hand, it has been contended that the proper interpretation of these two sections is that the lands referred to do not become alienable until five years after issuance of patent. Undoubtedly the use in these two sections of different standards, one in the affirmative and the other in the negative, renders the meaning somewhat obscure and doubtful.

¹ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Hoteyabi v. Vaughn*, 32 Okl. 807, 124 Pac. 63; *In re Lands of the Five Civilized Tribes* (D. C.) 99 Fed. 811.

² *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820.

The Attorney General of the United States held, considering these two sections together, that surplus lands allotted to members of the Cherokee Tribe do not become alienable until five years after issuance of patent.³ A similar interpretation has been adopted by the Supreme Court of the state of Oklahoma⁴ and by the Circuit Court of Appeals for the Eighth Circuit.⁵ A writ of error to review the decision of the Supreme Court of the state, so interpreting said provisions, has been sued out to the Supreme Court of the United States; but in view of the interpretation given by the Attorney General and the Circuit Court of Appeals it is hardly probable that the action of the Supreme Court of Oklahoma, in harmony with these conclusions, will be reversed.

§ 69. **Alienation of lands allotted in name of deceased member of the tribe.**—Section 20 of the Cherokee Agreement is in language identical in all material parts with the language of section 22 of the Choctaw-Chickasaw Supplemental Agreement. There is nothing in the other sections of the Cherokee Agreement which require giving to section 20 a different interpretation from that given to section 22 of the Choctaw-Chickasaw Supplemental Agreement. No restrictions whatever are imposed by this section on land selected in the name of deceased members of the tribe. Such land, therefore, is, from the date of selection and the acceptance thereof, alienable without restriction or condition.⁶ The Supreme Court of Kansas has held such lands descend subject to restrictions on alienation.*

§ 70. **Alienation—Freedmen allotments.**—C h e r o k e e freedmen entitled to enrollment and enrolled as freedmen of the Cherokee Tribe may be considered, for all purposes.

³ 26 Opinions Attorney General, 354.

⁴ *Allen v. Oliver*, 31 Okl. 356, 121 Pac. 226.

⁵ *Truskett v. Closser*, 198 Fed. 835, 117 C. C. A. 477.

⁶ *Mullen v. U. S.*, 224 U. S. 448, 56 L. Ed. 834; *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Hoteyabl v. Vaughn*, 32 Okl. 807, 124 Pac. 63; *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244.

* *Morris v. Greenlees* (Kan.) 135 Pac. 569.

relating to the alienation of their allotted lands, as members of such tribe.⁷ The allotments of freedmen are divided into homestead and surplus as are the allotments of members of the tribe, and were subject to the restrictions on alienation imposed in the Cherokee Allotment Agreement, on the alienation of homestead and surplus allotments respectively of the members of such tribe.

In applying subsequent legislation to freedmen allottees and heirs of the Cherokee Tribe, they should be treated as members of said tribe not of Indian blood.

The restriction on alienation of the surplus allotment of adult freedmen allottees was removed by the Act of April 21, 1904, and all restrictions on alienation of the homestead allotment of adult freedmen and upon both homestead and surplus allotments of minor freedmen were removed by the Act of May 27, 1908.⁸

§ 70a. **Alienation—Intermarried Cherokees.**—A limited number of white persons who intermarried with members of the Cherokee Tribe, prior to November 1, 1875, were entitled to enrollment and participation in the lands and properties of the tribe.⁹

No distinction is made in the allotment agreement as affecting the right of alienation between inter married citizens and other citizens of the Cherokee Tribe. Such intermarried citizens, however, were enrolled upon a separate roll, and are citizens not of Indian blood, and are so considered and treated in the application of subsequent legislation removing restrictions on alienation.

§ 70b. **Involuntary alienation.**—Section 14 of the Cherokee Agreement provides that "lands allotted to citizens

⁷ *Landrum v. Graham*, 22 Okl. 458, 98 Pac. 432; *United States ex rel. Lowe v. Fisher*, 223 U. S. 95, 32 Sup. Ct. 196, 56 L. Ed. 364; *Cherokee Nation & United States v. Whitmire*, 223 U. S. 108, 32 Sup. Ct. 200, 56 L. Ed. 370.

⁸ *Landrum v. Graham*, 22 Okl. 458, 98 Pac. 432.

⁹ *Cherokee Intermarried Cases*, 203 U. S. 76, 27 Sup. Ct. 29, 51 L. Ed. 96.

shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by allottee or his heirs, before the expiration of five years from the date of the ratification of this act."

This provision undoubtedly prevents the enforced alienation of allotted lands prior to the expiration of five years from the ratification of the agreement. Does it prevent the enforced alienation subsequent to that time to satisfy a judgment rendered or debt contracted prior thereto? If it does permit such enforced alienation to satisfy a previous debt, the efficacy of the provision will be very greatly impaired. The provision with reference to the alienation of the homestead is that, "during the time said homestead is held by the allottee, the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him." This language is somewhat broader than the language applicable to the surplus, and was perhaps meant to prohibit the enforced alienation of the homestead at any time on a debt contracted while the land so designated is occupied as a homestead.

This provision is in the nature of an exemption, rather than a restriction upon alienation. It is designed to protect members of the tribe against their own improvidence. Similar provisions have received a liberal interpretation to this end.¹⁰ It has been held, however, that the exemption under the Choctaw agreement, which is in language similar to the above provision, does not exempt lands of Choctaw and Chickasaw allottees from liabilities for torts¹¹ perpetrated prior to the time such lands become alienable. The basis of this conclusion is that a tort is not a debt contracted, or an obligation, within the contemplation of the section of the agreement involved. Cases con-

¹⁰ *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588; *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547.

¹¹ *Simmons v. Mullen*, 33 Okl. 184, 122 Pac. 518.

struing the exemption of the homestead carved out of public lands are treated as authority for the distinction applied. In view of the uniform liberal interpretation given by the courts for the purpose of protecting the Indian allottee against the enforced alienation of his allotted restricted lands upon any pretense whatever, it is a question of grave doubt as to whether this and similar provisions will be construed as failing to give protection against negligence or wrongful acts of the allottee.

§ 70c. **Cherokee Outlet allottees.**—The Cherokee Nation, in ceding what is known as the Cherokee Outlet to the United States, reserved the right to have not exceeding seventy members of the Tribe select an allotment out of the ceded lands; the aggregate of the allotments so selected not to exceed 5,600 acres.¹²

Pursuant to this reservation sixty-two Cherokee Indians received allotments, aggregating 4,949.45 acres. Such allotments were made, confirmed by the Secretary of the Interior, and conveyed to the allottees, respectively, by the United States in fee simple and without restrictions on alienation.¹³

¹² Act March 3, 1893, c. 209, 27 Stat. 612-640.

¹³ 17 Land Decisions, 225, 230.

CHAPTER 11

ALIENATION AND RESTRICTIONS THEREON UNDER CHOCTAW-CHICKASAW AGREEMENTS

- § 71. A general résumé.
- 72. Alienation of homestead—Restrictions on.
- 73. Alienation of fractional part of surplus of living members.
- 74. Date of patent.
- 75. Alienation of inherited surplus allotment.
- 76. Alienation of land allotted in name of ancestor.
- 77. Alienation—Freedmen lands.
- 78. Mississippi Choctaws.
- 78a. Intermarried whites and adopted citizens.
- 79. Involuntary alienation.

§ 71. A general résumé.—The original allotment agreement entered into by the Choctaws and Chickasaws was executed April 23, 1897, and approved by Congress June 28, 1898, and was ratified by the Choctaws and Chickasaws.¹

Before any of the lands of the Choctaws and Chickasaws were allotted, the Choctaw-Chickasaw Supplemental Agreement² was approved by Congress and ratified by the Choctaws and Chickasaws and became effective as of the 25th day of September, 1902.

The supplemental agreement contained a statement that no act of Congress, nor treaty provision, nor any provision of the Atoka Agreement inconsistent with the said supplemental agreement, should be in force in the Choctaw and Chickasaw Nations. Only such portions of the Atoka Agreement as are not in conflict with the supplemental agreement, or are not covered by the terms thereof, remain in force.

The Atoka Agreement provides for homestead and surplus allotments to members of the tribe and an allotment to Choctaw and Chickasaw freedmen, the alienation of which is to be controlled by the provision relating to Choc-

¹ Reproduced in full as chapter 44.

² Reproduced in full as chapter 45.

taw and Chickasaw homesteads. No provision is made for the allotment of lands in the name of deceased members.

The Atoka Agreement also contains a provision declaring any sale or incumbrance or contract looking to the sale of the land of any allottee, except as provided in the act, null and void.

The supplemental agreement, in addition to making provision for the allotment of a homestead and surplus to each member of the tribe and an allotment of forty acres to every Choctaw and Chickasaw freedman provides for the allotment of a distributive share in the name of deceased members of the tribe who were living September 25, 1902, and who died prior to the selection of an allotment.

Under the original agreement the homestead of the allottee was made inalienable for the lifetime of the allottee, not exceeding twenty-one years from date of patent; and under the supplemental agreement the homestead was made inalienable during the lifetime of the allottee, not exceeding twenty-one years from date of certificate of allotment.

Under the original agreement the surplus lands of members of the tribe were alienable for a price to be actually paid, including no former indebtedness, one-fourth in one year, one-fourth in three years and the balance in five years from date of patent.

Under the supplemental agreement the surplus lands were alienable after issuance of patent, one-fourth in acreage in one year, one-fourth in acreage in three years, and the remainder in five years, in each case from date of patent, but were not to be alienable before the expiration of the tribal government by the allottee or his heirs for less than the appraised value.

Under the original agreement the homestead provision applicable to the members of the tribe was made applicable to the allotment of the Choctaw and Chickasaw freedmen.

The supplemental agreement, instead of making the provision relating to the homestead of members of the tribe applicable, provided that the allotment of freedmen should

be inalienable during the lifetime of the allottee, not exceeding twenty-one years from date of certificate of allotment.

No provision was made for allotment of lands in the name of a deceased enrolled member under the Atoka Agreement, but was in the supplemental agreement.

So far as restrictions upon alienation under the Choctaw-Chickasaw allotment agreement are concerned, they may be classified as follows: (1) Restrictions upon alienation of homesteads of members of the tribe; (2) restrictions upon the alienation of surplus lands of living members of the tribe; (3) restrictions upon alienation of inherited surplus lands; (4) restrictions upon the alienation of land allotted to Choctaw and Chickasaw freedmen; (5) restrictions upon alienation of land allotted in the name of deceased members of the tribe; and (6) restrictions upon involuntary alienation.

The subject-matter of restrictions upon alienation under the Choctaw-Chickasaw agreements is believed to be controlled almost exclusively by the provisions of the supplemental agreement. The provisions of the original or Atoka Agreement apply only when not in conflict with the provisions of the supplemental agreement. Inasmuch as the supplemental agreement is complete in itself as applied to restrictions upon alienation, little reason can be found for the application of the restrictions found in the original agreement to lands allotted under the supplemental agreement. The court has, in a few instances, given more prominence to the effect of the provisions of the Atoka Agreement imposing restrictions upon alienation than is consistent with the language of the supplemental agreement and its exclusiveness where applicable.⁸

§ 72. Alienation of homestead—Restrictions on.—By specific terms of the allotment agreement the homestead of the Choctaw and Chickasaw allottees was made inalienable

⁸ *Lewis v. Clements*, 21 Okl. 167, 95 Pac. 769.

during the lifetime of the allottee, but not exceeding twenty-one years from date of certificate of allotment. The homestead here referred to is a part of the allotment designated as and reserved for homestead purposes under the allotment agreement. It may, and most frequently does, exist as to land never in fact occupied as a homestead. It is not a homestead as that term is usually understood and applied. It is an arbitrary application of the term "homestead" to a certain part of the allotment, which the allottee is prohibited from alienating during his lifetime. The word "homestead," as generally used in this treatise, unless otherwise modified, relates to the homestead reserved and set apart under the provisions of the various allotment agreements and allotment acts, and not to the homestead by occupancy under the homestead laws of Oklahoma. This provision restricting alienation of the homestead is clearly personal to the allottee and ceases upon his death. The prohibition against alienation during the lifetime of the allottee is an implied grant of authority to the heirs of the allottee to alienate upon his death. The homestead, therefore, of a living member of the Choctaw and Chickasaw Tribes becomes alienable upon his death, and regardless of whether certificate of allotment or patent has issued.⁴ Subsequent legislation affecting the right of alienation of the homestead allotment by both the allottee and his heirs is found in Act April 26, 1906,⁵ and in Act May 27, 1908.⁶

§ 73. Alienation of fractional part of surplus of living members.—Section 16 of the supplemental agreement, which fixes the restrictions upon alienation of the allotments of members of the Choctaw and Chickasaw Tribes in excess

⁴ Mullen v. United States, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; Hancock v. Mutual Trust Co., 24 Okl. 391, 103 Pac. 566; Hoteyabl v. Vaughn, 32 Okl. 807, 124 Pac. 63.

⁵ The Act of April 26, 1906, is reproduced in chapter 52, and its effect on the right of alienation is discussed in sections 97 to 104.

⁶ The Act of May 27, 1908, is reproduced in chapter 53, and its effect on the right of alienation is discussed in sections 107 to 116.

of the homestead, and commonly known and referred to as the "surplus allotment," is as follows: "All lands allotted to members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: Provided, that such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value."

This provision presents for consideration a double question. When do the lands allotted under this section become alienable if the allottee continues to live? When do they become alienable in case of death of the allottee?

We will consider, first, when the fractional parts of the surplus allotment become alienable where the allottee continues to live.

To summarize the language of the act, one-fourth in acreage may be alienated by the allottee after issuance of patent and at the expiration of one year from the date thereof, and one-fourth in acreage may be alienated after issuance of patent and at the expiration of three years from the date thereof, and the remainder may be alienated after issuance of patent and after the expiration of five years from the date thereof.

The two questions to be determined in arriving at a proper solution of the meaning of this provision are: What constitutes the issuance of a patent? and what is the date of the patent?

The process of executing and delivering Choctaw and Chickasaw patents was as follows: The patent was prepared by the Secretary of the Interior, signed by the Principal Chief of the Choctaw Nation, the time of his signature being dated, signed by the Governor of the Chickasaw Nation, the time of his signature being dated, and approved

by the Secretary of the Interior, the time of his approval being dated. The patent was, at the convenience of the officials, recorded and delivered to the allottee.

When is a patent, taking such course, issued, and what is its date? Judge Campbell, in a recent opinion,⁷ in one of the Indian land suits pending in the District Court of the United States for the Eastern District of Oklahoma, held that a patent is not issued under this provision until delivered to the patentee, notwithstanding it is required by section 66 of the supplemental agreement to be recorded in the office of the Commissioner to the Five Civilized Tribes before delivery and such recording shall have like effect as other such records. He further concludes that after the Act of April 26, 1906, a patent was issued when recorded, because under the provision of section 5 of that act the recording is made to operate as a conveyance of the legal title without delivery. It is probable that in this particular the Act of April 26, 1906, is but declaratory of an existing rule rather than the establishment of a new one.

§ 74. **Date of patent.**—The patent is but a joint deed, executed by the Principal Chief of the Choctaws and the Governor of the Chickasaws as grantors. It is doubtful if the Secretary's approval of the Choctaw and Chickasaw patent was either necessary or effectual to accomplish anything. It certainly is no part of the execution of the conveyance. It is no proper part of the patent. If necessary to the validity of the patent, it makes the same effectual as of the date of its execution.⁸

It is not believed that the date of a patent thus executed could by any legitimate interpretation of the statute be as-

⁷ *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811.

⁸ *Pickering v. Lomax*, 145 U. S. 310, 12 Sup. Ct. 860, 36 L. Ed. 716; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *Lykins v. McGrath*, 184 U. S. 169, 22 Sup. Ct. 450, 46 L. Ed. 485; *Almeda Oil Co. v. Kelley* (Okl.) 130 Pac. 931; *Ingraham v. Ward*, 56 Kan. 550, 44 Pac. 14; *Campbell v. Kansas Town Co.*, 69 Kan. 814, 76 Pac. 840.

cribed to a time later than the date of the signature of the last grantor. If the purpose of the statute had been to fix as the period of time from which to calculate the beginning of the restriction period the date of the Secretary's approval, or the delivery of patent, language could have easily been found capable of expressing such conclusion. There is no logical reason, nor anything apparent from the context, which would authorize a court by construction to change the wording of the act, "from date of patent," so as to make it read "from date of Secretary's approval" or "date of delivery."

"Date of patent," "date of approval," "date of recording," and "date of delivery" are distinct acts, having reference to different steps in the progress of completing the allottee's evidence of title, and should be so considered. It is fair to assume that this statute, by "date of patent," means the date of the signature of the representatives of the grantors signing the same.

§ 75. **Alienation of inherited surplus allotment.**—Are the restrictions upon alienation of surplus lands, imposed by section 16 of the Choctaw-Chickasaw Supplemental Agreement, personal to the allottee, and expire upon his death, do they run with the land, or are they for a fixed period of time, regardless of the death of the allottee?

The question presented is a grave one, and cannot be considered free from doubt. For almost a century various restrictions, differing much in their phraseology, have been imposed upon the alienation of allotted Indian lands. No other restrictions upon alienation have been couched in the same language, or language of similar import, to that of section 16.⁹ In previous instances the language has either made the restrictions more clearly personal, or for a def-

⁹ *Clark v. Libbey*, 14 Kan. 435; *Libbey v. Clark*, 118 U. S. 250, 6 Sup. Ct. 1045, 30 L. Ed. 133; *Taylor v. Brown*, 5 Dak. 335, 40 N. W. 525; *Id.*, 147 U. S. 640, 13 Sup. Ct. 549, 37 L. Ed. 313; *Peoria & Miami Indians*, 29 Land Dec. 239.

inite time, or fixed the same more clearly upon the land, than does the above provision. The usual restriction runs against alienation by either the allottee or his heirs for a given period, or until the happening of a specific contingency.

Recurring to the language used in sections 12, 13 and 16, it will be noticed that the word "heir" does not appear in any one of said sections, except in the proviso of section 16. The body of section 16 is that "all lands allotted to the members of said tribe, except such land as is set aside for each as a homestead as herein provided, shall be alienable after issuance of patent as follows." And this is an affirmative provision. The language is not that the lands shall not be alienable until after issuance of patent, but is a declaration that they shall be alienable under certain conditions in a certain time after issuance of patent. This is not in itself a restriction upon alienation. It is a positive provision permitting alienation under certain conditions. It might well have been and probably was contemplated that the lands under some other provision would become alienable sooner than provided in section 16, but that in any event under the terms of this section, if they had not otherwise become alienable, they should become alienable in one, three and five years after the issuance of patent. Wherever Congress undertook to absolutely limit alienation, it did so by negative provision, limiting or denying the right to alienate, and not by an affirmative provision, providing that the lands should become alienable at a given time. The most that can be said in support of this provision as a restriction upon alienation is that Congress at that time recognized that there were existing restrictions, and that it intended to provide that, whatever the conditions might be, in no event should these restrictions extend beyond the time provided in section 16.

There were allotted to the members of the Choctaw and Chickasaw Tribes only 320 acres of the average allottable

lands of the tribes. These two tribes were thought at that time to own a sufficient acreage to allot to each member 500 acres of average allottable land. The subsequent addition of names to the tribal roll will probably reduce the amount that can be actually allotted to about 450 acres. If it had been thought for the best interest of the members of the tribes that they should own more than 320 acres of the average allottable land each, it seems that Congress would have allotted to them an additional acreage. The surplus over and above that which is allotted to members and freedmen is to be sold and the money divided. This ought to be conclusive of the fact that both Congress and the tribes were of the opinion that 320 acres of the average land was all that the Indian could beneficially use as an allotment. This allotment was not limited to the adult members of the tribe; but every member thereof, whether he was rocked in the cradle, a full-grown man in possession of all of his faculties, or tottering on the edge of the grave, was provided with a full allotment. What reason could have prompted either Congress or the tribes to have thus restricted the alienation of inherited land, when both had recognized by their action that 320 acres was the maximum limit of land which could be beneficially used by a member of the tribe. Further, the homestead, which was considered the more valuable part, was made alienable immediately upon the death of the allottee. Is there any reason to suppose, from the language used or the considerations prompting the insertions of these provisions in the agreement, that it was deemed advisable that the surplus lands should remain inalienable for a longer period than the homestead?

The Supreme Court of the state has indicated that the restrictions contained in section 16, in so far as the time limit is concerned, expire with the death of the allottee; that the only restriction against alienation by the heirs is

that they shall not, during the existence of the tribal government, alienate for less than the appraised value.¹⁰

The Supreme Court of the United States¹¹ used the following language with reference to this provision: "On the other hand, the proviso of paragraph 16, which relates to the additional portion of the allotment, or the so-called 'surplus' lands, contains a restriction upon alienation, not only by the allottee, but by his heirs."

The court did not say whether this restriction was one of a time limit or upon sale for less than the appraised value. Interpreted in the light of surrounding conditions and of the language of the homestead provision, the inference is strong that the only restriction against alienation by heirs is that the land shall not sell for less than the appraised value.

The United States District Court for the Eastern District of Oklahoma has recently held that the time restrictions imposed upon alienation do not expire with the death of the allottee, but that they continue as a prohibition against alienation by the heirs for the same period of time they would have existed against the allottee if he had continued to live.¹²

Under existing conditions no lawyer could safely advise his client to purchase where the title depended upon the validity of a conveyance made by the heirs of an allottee before the expiration of the time limit provided in section 16. Neither can he advise a client, who holds title under such conditions, to assent to the invalidity thereof until adjudged to be invalid by a court of last resort.

The language of this section is of such doubtful import that a lawyer can do little more than hazard an opinion of the result of its final interpretation. The question of when

¹⁰ *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566.

¹¹ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

¹² *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811.

the surplus allotment of Choctaw and Chickasaw allottees becomes alienable under the Choctaw-Chickasaw Supplemental Agreement is involved in the case of *Gannon v. Johnson* now pending in the Supreme Court of the state, and an opinion may be expected at an early date, as the cause was submitted at the June, 1913, term. Subsequent legislation affecting the right of alienation of the surplus allotment of the allottee of the Choctaw and Chickasaw Nations is found in the Acts of April 21, 1904,¹³ April 26, 1906,¹⁴ and May 27, 1908.¹⁵

§ 76. Alienation of land allotted in name of ancestor.—By section 22 of the supplemental agreement it is provided that there shall be selected an allotment in the name of each deceased member dying subsequent to September 25, 1902, and that such allotment so selected in the name of the deceased member shall descend to his heirs according to the laws of descent and distribution as provided in Mansfield's Digest of the Statutes of Arkansas.

It will be observed that no restriction whatever is imposed upon the alienation by the heirs of land allotted in the name of the ancestor under this section, nor is there any such connection between sections 16 and 22 as would indicate that it was intended that the restrictions contained in section 16 should control in the alienation of lands allotted under section 22.¹⁶

The Supreme Courts of the state and of the United States have each held that there are no restrictions on the alienation by heirs of lands allotted in the name of a deceased member of the tribe, that allotment confers upon the allottee full equitable title and establishes his right to a patent, and that the heirs of the allottee may, therefore, convey from and after allotment and without awaiting the issuance

¹³ For discussion of Act April 21, 1904, see sections 93 to 95.

¹⁴ For discussion of Act April 26, 1906, see sections 97 to 104.

¹⁵ For discussion of Act May 27, 1908, see sections 105 to 116.

¹⁶ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Hoteyabi v. Vaughn*, 32 Okl. 807, 124 Pac. 63.

of patent.¹⁷ Such is the rule declared in the earlier similar cases by the Supreme Court of the United States.¹⁸

§ 77. **Alienation—Freedmen lands.**—Under section 13 of the supplemental agreement the allotment of each Choctaw and Chickasaw freedman is made inalienable during the lifetime of the allottee, not exceeding twenty-one years from date of certificate of allotment.

Under the Atoka Agreement, following the provision for the selection of homesteads for members of the tribe and imposing restrictions upon alienation thereof, is a declaration that such provision shall apply to the Choctaw and Chickasaw freedmen.

Section 3 of the Act of April 26, 1906, contains the declaration that lands allotted to freedmen of the Choctaw and Chickasaw Tribes shall be considered homesteads and be subject to all acts of Congress applicable to Choctaw and Chickasaw homesteads.

It is a fair interpretation of this legislation that the lands allotted to Choctaw and Chickasaw freedmen be classed as homesteads for the purpose of determining their alienability.

Under said section 13 specific provision is made that such lands shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from date of patent, and therefore, by direct implication, made alienable either at the expiration of the twenty-one years or on death of the allottee.¹⁹

¹⁷ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Hoteyabi v. Vaughn*, 32 Okl. 807, 124 Pac. 63.

¹⁸ *Doe ex dem. Mann v. Wilson*, 23 How. 457, 16 L. Ed. 584; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *Stark v. Starr*, 94 U. S. 477, 24 L. Ed. 276; *Ballinger v. United States ex rel. Frost*, 216 U. S. 240, 30 Sup. Ct. 338, 54 L. Ed. 464; *Simmons v. Wagner*, 101 U. S. 260, 25 L. Ed. 910; *Barney v. Dolph*, 97 U. S. 652, 24 L. Ed. 1063.

¹⁹ *In re Lands of Five Civilized Tribes (D. C.)* 199 Fed. 811; *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

By section 16 of the Act of May 29, 1908²⁰ (35 Stat. 451, c. 216), jurisdiction is conferred upon the Court of Claims, with the right of appeal to the Supreme Court of the United States, to hear and determine the claims of certain persons for services rendered and expenses incurred by them as attorneys for the Choctaw and Chickasaw freedmen in the prosecution of their claims for allotments of land within the domain of the Choctaw and Chickasaw Nations.

It is further provided that the court shall render judgment for such amount, if any, as there is adjudged to be justly and equitably due to said attorneys as the value of the services rendered and expenses incurred by them for and on behalf of said freedmen, such judgment to run against the individuals for whom such services were rendered and to constitute a lien upon their respective allotments for the pro rata amounts thereof.

§ 78. Mississippi Choctaws.—Under the Choctaw-Chickasaw Supplemental Agreement all persons identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws were permitted, at any time within six months after the date of identification by the Commission, to make bona fide settlement in the Choctaw-Chickasaw country, and upon proof of such settlement to the Commission within one year after identification to be enrolled as Mississippi Choctaws entitled to allotment as provided for citizens and members of said tribe.

The Mississippi Choctaws were required to be, and were, enrolled upon separate rolls. Under section 42 of said supplemental agreement when such Mississippi Choctaw had resided for a period of three years in the Choctaw or Chickasaw Nation he became entitled, upon proof of such residence, to receive a patent for his allotment as provided in the Atoka Agreement. The land so allotted to a Mississippi Choctaw was required to be held by him as

²⁰ See section 597c.

provided in said agreement for members of the Choctaw and Chickasaw Tribes respectively.

Failure to make proof within four years after enrollment by the allottee or his heirs terminated his interest in the land selected in allotment, in which event the lands were to be sold by the Secretary of the Interior for not less than the appraised value and the proceeds turned in to the Choctaw and Chickasaw Tribes.

By the Act of Congress approved May 31, 1900 (31 Stat. 236, c. 598), before provision had been made for admitting the Mississippi Choctaws as allottees of the Choctaw and Chickasaw Tribes, there was inserted in the Indian Appropriation Bill a provision declaring all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to Mississippi Choctaws to be void. This legislation was brought about by reason of the fact that many contracts had been made with members of these tribes in Mississippi for the purchase of their lands as soon as allotted.

The certificate issued by the Commission to the Five Civilized Tribes to Mississippi Choctaws was, in the first instance, termed a homestead designation as to the homestead selection, and an allotment designation as to the lands in excess of the homestead. Patents issued to the Mississippi Choctaws contained the recital that they had duly complied with the act with reference to residence, etc.

Until the compliance by the Mississippi Choctaws with the requirements of the statute, their interest in the allotted lands was subject to be terminated by failure so to do. After compliance with the statute the relation of the Mississippi Choctaw to his allotment is the same as that of members of the Choctaw and Chickasaw Tribes. Such allotted lands were subject to the restriction upon alienation imposed upon allottees of the Choctaw and Chickasaw Tribes by the Choctaw-Chickasaw Allotment Agreements,

as well as to other provisions of said agreements.²¹ In other words, Mississippi Choctaws are, after issuance of patent, to all intents and purposes Choctaws and Chickasaws, and subject to all legislation affecting the allotted lands of said tribes as fully and completely as are the Choctaws and Chickasaws.

By section 27 of the Act of May 29, 1908,²² the Court of Claims is authorized and directed to hear, consider and adjudicate the claims of certain persons for services rendered and expenses incurred in the matter of the claims of Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of quantum meruit.

There are two provisions for the satisfaction of such judgment as may be rendered: One, that it may be paid from any funds now or hereafter due any such Choctaw as an individual by the United States. The second is that the lands allotted to such Mississippi Choctaws shall be subject to a lien for the satisfaction of such judgment as may be rendered by the Court of Claims.

Notices of liens claimed under this provision have been filed with the register of deeds in many of the counties of the state of Oklahoma.

§ 78a. Intermarried whites and adopted citizens.—White persons intermarrying with members of either the Choctaw or Chickasaw Tribes of Indians, in accordance with the laws and customs of the tribes respectively, were entitled to participate in the allotment of the tribal lands and distribution of tribal property.

Separate rolls were prepared of the Choctaw citizens by intermarriage and of the Chickasaw citizens by intermarriage, and allotments were made to such intermarried citizens of the Choctaw and Chickasaw Tribes under the Choctaw-Chickasaw Supplemental Agreement.

²¹ Hoteyabi v. Vaughn, 32 Okl. 807, 124 Pac. 63.

²² See section 597d.

The allotments so made to such intermarried citizens were divided into homestead and surplus, and were held subject to all restrictions on alienation imposed upon the allottees or allotted lands of members by blood of said tribes. They were enrolled, however, as members not of Indian blood of said tribes, and are so treated in the application of subsequent legislation removing or otherwise affecting restrictions on alienation.²³

§ 79. Involuntary alienation.—Section 15 of the Choctaw-Chickasaw Supplemental Agreement is as follows: "Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt or obligation of any character contracted prior to the time at which said land may be alienated under this act nor shall said lands be sold except as herein provided."

The Supreme Court of the state, in construing this statute, has held that it means that there shall be no burden on the title or charge against such allotment, and that the same shall in no event become liable for any debt or obligation contracted prior to the removal of restrictions, and that the lands of an allottee may not, as against his heirs, after his death, be charged with any liability on account of any obligation incurred by the ancestor during his lifetime, and while the lands were subject to restrictions on alienation;²⁴ and such has been the construction of similar provisions of other statutes.²⁵

It has, however, been held that this statute does not exempt the lands of the allottee for torts committed or

²³ *Lynch v. Franklin* (Okl.) 130 Pac. 599; *Frame v. Bivens* (C. C.) 189 Fed. 785.

²⁴ *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547.

²⁵ *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588; *In re Washington's Estate* (Okl.) 128 Pac. 1079; *In re Daubner* (D. C.) 96 Fed. 805; *Wallowa Nat. Bank v. Riley*, 29 Or. 289, 45 Pac. 766, 54 Am. St. Rep. 794; *Coleman v. McCormick*, 37 Minn. 179, 33 N. W. 556; *Towner v. Rodegeb*, 33 Wash. 153, 74 Pac. 50, 99 Am. St. Rep. 936.

perpetrated by him prior to allotment, or to the time the allotted lands become alienable.²⁶

The first-mentioned case is pending on writ of error in the Supreme Court of the United States.²⁷ It was strenuously urged to that court in another case that this section operates to prohibit alienation of allotted lands by Choctaw and Chickasaw allottees, except where such alienation is specifically authorized by other provisions of the agreement. The court, however, failed to find in this statute, directed against involuntary or forced alienation, any prohibition against voluntary alienation of allotted lands.²⁸

²⁶ *Simmons v. Mullen*, 33 Okl. 184, 122 Pac. 518; *Brun v. Mann*, 151 Fed. 145, 80 C. C. A. 513, 12 L. R. A. (N. S.) 154.

²⁷ *Simmons v. Mullen*, 33 Okl. 184, 122 Pac. 518.

²⁸ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

CHAPTER 12

ALIENATION IN CREEK NATION

- § 80. Résumé of the provisions of allotment agreements relating to subject of restrictions on alienation.
- 81. Alienation—Restrictions on, of surplus Creek allotment.
 - 82. Alienation—Creek homestead.
 - 82a. Alienation—Creek freedmen allotments.
 - 82b. Alienation—Creek adopted citizens.
 - 83. Alienation—Restrictions on land allotted in the name of deceased member under section 28 of the Original Creek Agreement.
 - 84. Involuntary alienation—Restrictions on.

§ 80. Résumé of the provisions of allotment agreements relating to subject of restrictions upon alienation.—Restrictions upon alienation of lands allotted to members of the Creek Tribe of Indians were imposed in both the Original and Supplemental Creek Agreements—in the Original Agreement by section 7 thereof (Act March 1, 1901, c. 676, 31 Stat. 863), and in the Supplemental Agreement by section 16 thereof (Act June 30, 1902, c. 1323, 32 Stat. 503). The language in section 7 of the Original and section 16 of the Supplemental Agreements, though differing slightly in wording, is substantially identical in meaning, with the single exception that the five-year period of restriction upon alienation in the Original Agreement is made to run from the ratification thereof, to wit, May 25, 1901, and in the Supplemental Agreement five years from the date of the approval thereof, which was August 8, 1902.

The language of section 16 is a little more explicit and definite than the language found in section 7. The provisions of section 7 apply to all conveyances made prior to the 8th day of August, 1902, and the provisions of section 16 apply to all conveyances made subsequent to that date. Section 7 of the Original Agreement and section 16 of the Supplemental Agreement fix the period of restriction on aliena-

tion on all lands (homestead and surplus) allotted to living members of the tribe.

Section 28 of the Original Agreement and section 8 of the Supplemental Agreement each provide for the allotment of lands, and that the land and money to which an allottee would have been entitled, if living, shall in case of death before receiving an allotment be allotted and descend to his heirs, in the first instance according to the law of descent of the Creek Nation, and in the last instance as provided in the Supplemental Agreement.

§ 81. **Alienation—Restrictions on surplus Creek allotment.**—The restriction upon alienation of the surplus lands of allottees of the Creek Tribe ran for the period of five years from August 8, 1902, and expired so far as the Supplemental Agreement provides at midnight of August 7, 1907.¹ There is nothing indefinite or uncertain about the time of the expiration of such restrictions. The courts have generally, and with substantial uniformity, held that in computing the time during which the alienation of allotted Indian land is forbidden the date of the beginning of the restriction should be included. The restrictions imposed by the Supplemental Creek Agreement having begun on the 8th day of August, 1902, they expired with the 7th day of August, 1907.² Prior, however, to the expiration of the restrictions imposed under the Supplemental Agreement, there was additional legislation extending indefinitely the restriction requiring the Secretary's approval of conveyances by full-blood heirs.³ The surplus lands of the Creek allottee, both under the Original and Supplemental Agreements, were subject to alienation at all times on approval of the Secretary of the Interior.

¹ *Baker v. Hammett*, 23 Okl. 480, 100 Pac. 1114; *Iowa Land & Trust Co. v. Dawson* (Okl.) 134 Pac. 39.

² *Taylor v. Brown*, 147 U. S. 640, 13 Sup. Ct. 549, 37 L. Ed. 313.

³ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

The Acts of March 3, 1903, April 21, 1904; April 26, 1906, and May 27, 1908, affect the right to alienate the surplus lands of Creek allottees.⁴

§ 82. **Alienation—Creek homestead.**—Under the Original Creek Agreement: “Each citizen shall select from his allotment forty acres of land as a homestead, which shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years. * * * The homestead of each citizen shall remain, after the death of the allottee, for the use and support of the children born to him, after the ratification of this agreement, but if he have no such issue, then he may dispose of his homestead by will, free from limitation herein imposed, and if this be not done the land shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, free from such limitation.”

The provision in the Supplemental Creek Agreement regulating the alienation of the homestead of the Creek allottee is as follows: “The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the law of descent herein otherwise prescribed.”

The Supreme Court of the state, considering these two provisions, together with the following provision of section 7 of the Original Agreement, to wit: “Lands allotted to citizens hereunder shall not in any manner whatsoever, or at any time, be incumbered, taken, or sold to secure the satisfaction of any debt or obligation contracted or incurred prior to the date of the deed to the allottee therefor, and

⁴ For discussion of Act March 3, 1903, see section 92; of April 21, 1904, see sections 93 to 95; of April 26, 1906, see sections 96 to 104; and of May 27, 1908, see chapter 53.

such lands shall not be alienable by the allottee or his heirs at any time before the expiration of five years from the ratification of this agreement, except with the approval of the Secretary of the Interior"—held that the homestead was not alienable by the heirs of the allottee prior to the expiration of five years from the ratification of the Original Creek Agreement.⁵ In other words, the court brought forward as cumulative the restrictions imposed against the alienation of the surplus allotment and applied the same to the homestead allotment. It was, however, in a case where the land had been allotted in the name of a deceased member of the tribe. Subsequently the court reversed this decision, and held that the homestead of the Creek allottee, where no issue was left surviving born subsequent to May 25, 1901, descended free of all restrictions on alienation, and that such homestead lands were alienable by the heirs of the allottee immediately upon his death.⁶ The United States District Court for the Eastern District of Oklahoma has likewise held, with reference to both the Original and Supplemental Agreement, that where no issue survives the allottee born after May 25, 1901, the homestead may be disposed of by will, free from restrictions on alienation, and if not so disposed of descends to the heirs of the allottee free from all restrictions on alienation.⁷ It is readily apparent that the interpretation given this act in the latter decision by the Supreme Court of the state and by the United States District Court for the Eastern District of Oklahoma is the correct one.⁸ It has been held that the Act of April 26, 1906, operates to extend restrictions on alienation

⁵ *Barnes v. Stonebraker*, 28 Okl. 75, 113 Pac. 903; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338.

⁶ *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244; *Deming Inv. Co. v. Bruner Oil Co.* (Okl.) 130 Pac. 1157; *Manuel v. Smith* (Okl.) 130 Pac. 1159; *Woodward v. De Graffenried* (Okl.) 131 Pac. 162; *Iowa Land & Trust Co. v. Dawson* (Okl.) 134 Pac. 39.

⁷ *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811.

⁸ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

of inherited Creek lands,⁹ but whether it applied to lands which descended free from restrictions on alienation has not been determined. The Act of May 27, 1908, is, however, applicable to conveyances by full-blood heirs of inherited Creek lands.¹⁰

§ 82a. **Alienation—Creek freedmen allotments.**—Under the various treaties and agreements between the United States and the Creeks, the Creek freedmen were entitled to participate in the division of lands and properties of the Creek Tribe or Nation of Indians. Under these treaties and agreements Creek freedmen numbering in excess of 6,100 were enrolled as “freedmen of the Creek Tribe,” but with all the rights, so far as the allotment of tribal lands are concerned, of Creek citizens. Allotments were made to such enrolled Creek freedmen, homestead and surplus, under the same terms and conditions and subject to the same restrictions on alienation as those made to members of the Creek Tribe. Creek freedmen, however, were enrolled on separate rolls as freedmen, and therefore not of Indian blood, within the purview and meaning of subsequent legislation making the right of alienation dependent upon the absence or the quantum of Indian blood of the allottee or heir.¹¹

§ 82b. **Alienation—Creek adopted citizens.**—There are enrolled on the final roll of Creek citizens by blood the names of a number of adopted citizens who are not of Creek blood. The fact that such persons are not of Creek blood is indicated by the designation given under the column

⁹ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

¹⁰ For discussion of Act of April 26, 1906, see sections 96 to 104, and of May 27, 1908, see chapter 15.

¹¹ *Sharp v. Lancaster*, 23 Okl. 349, 100 Pac. 578; *Blakemore v. Johnson*, 24 Okl. 544, 103 Pac. 554; *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244; *United States v. Jacobs*, 195 Fed. 707, 115 C. C. A. 507; *Hawkins v. Oklahoma Oil Co. (C. C.)* 195 Fed. 345; *United States v. Shock (C. C.)* 187 Fed. 862; *McNac v. Jones (Okl.)* 132 Pac. 1088.

used to indicate the quantum of blood in the enrollment record. Under this column, opposite the names of each of the adopted citizens, in lieu of the quantum of Indian blood, appear the words "White," "Adopted," "Adopted White," "Spanish," "Cherokee," or other designation showing that such members are not of Creek blood.

They received allotments, homestead and surplus, subject to the same restrictions on alienation as did members by blood and freedmen of said tribe. Such members are, however, for the purpose of the application of subsequent legislation, members of the Creek Tribe not of Indian blood.¹²

§ 83. Alienation—Restrictions on land allotted in the name of a deceased member under section 28 of the Original Creek Agreement.—Section 28 of the Original Creek Agreement provides that, where certain members of the tribe die before enrollment, the lands and moneys to which they would be entitled if living shall descend to their heirs according to the laws of descent and distribution of the Creek Nation and be allotted and distributed accordingly. Section 8 of the Supplemental Creek Agreement brings the same provision forward, and provides that where any such member of the tribe has died since May 25, 1901, or may hereafter die before receiving his allotment, the lands and moneys to which he would be entitled, if living, shall descend to his heirs as therein provided and be allotted and distributed accordingly. In neither instance are there restrictions imposed on alienation by the heirs of the lands allotted to a deceased ancestor.

In a recent discussion of this provision the Supreme Court of the United States quotes an opinion of Mr. Justice Van Devanter, then an Assistant Attorney General in the Department of the Interior, to the effect that lands allotted to a deceased Creek allottee descend to his heirs free from restrictions on alienation for the same reasons and upon the same principle that lands allotted in the name of a deceased

¹² *Parkinson v. Skelton*, 33 Okl. 813, 128 Pac. 131; *Iowa Land & Trust Co. v. Dawson* (Okl.) 134 Pac. 39.

member under section 22 of the Choctaw-Chickasaw Supplemental Agreement descend free from restrictions on alienation.¹³

In two earlier cases the Supreme Court of the state held that lands allotted under section 28 of the Original Creek Agreement, including both the parts thereof designated as "homestead" and "surplus" by the department, descended to the heirs subject to restrictions on alienation as though allotted to a living member of the tribe.¹⁴

Subsequently the Supreme Court of the state, and the Circuit Court of Appeals for the Eighth Circuit, after an exhaustive consideration of the subject, held that all lands allotted under section 28 of the Original Creek Agreement descend to the heirs of the allottee free from restrictions on alienation.¹⁵

It has been held that the Act of April 26, 1906, does not operate to reimpose restrictions on alienation by full-blood heirs where such restrictions had been removed or had expired prior to the passage of that act.¹⁶ Conveyances by full-blood heirs made subsequent to May 27, 1908, are required to be approved by the county court having jurisdiction of the estate of the deceased allottee.¹⁷

§ 84. Involuntary alienation—Restrictions on.—Section 7 of the Original Creek Agreement provides that "lands allotted to citizens hereunder shall not in any manner whatsoever, or at any time, be incumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the date of the deed to the allottee. * * *" Section 16 of the Supplemental Agreement provides that lands

¹³ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Woodward v. De Graffenried* (Okl.) 131 Pac. 162.

¹⁴ *Barnes v. Stonebraker*, 28 Okl. 75, 113 Pac. 903; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338.

¹⁵ *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244; *Deming Inv. Co. v. Bruner Oil Co.* (Okl.) 130 Pac. 1157; *Manuel v. Smith* (Okl.) 130 Pac. 1159; *Reed v. Welty* (D. C.) 197 Fed. 419.

¹⁶ *Bartlett v. United States* (C. C. A.) 203 Fed. 410.

¹⁷ See chapter 15; *United States v. Knight* (C. C. A.) 206 Fed. 145.

allotted to citizens shall not, in any manner whatever, at any time, be encumbered, taken, or sold, to secure any debt or obligation, nor be alienated by the allottee or his heirs before the expiration of five years from the date of approval of such Supplemental Agreement, except with the approval of the Secretary of the Interior.

The purpose of these provisions was to protect the lands allotted to Creek citizens against involuntary alienation, incumbrance, or forced sale of any kind to secure the satisfaction of any debt or obligation, for the period of time mentioned. It is an exemption law designed to protect allotted lands from forced sale for the satisfaction of any debt or obligation incurred while the exemption was in operation. The surplus lands of a Creek allottee may not be sold or incumbered after the expiration of the five-year period for any debt or obligation incurred during such exemption period.¹⁸

¹⁸ *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588; *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547; *In re Washington's Estate* (Okl.) 128 Pac. 1079; *Neillson v. Alberty* (Okl.) 129 Pac. 847-851; *Redwine v. Ansley*, 32 Okl. 317, 122 Pac. 679; *Simmons v. Mullen*, 33 Okl. 184, 122 Pac. 518.

CHAPTER 13

RESTRICTIONS ON ALIENATION—SEMINOLE NATION

- § 85. **Résumé of the provisions of Seminole Agreements imposing restrictions on alienation.**
- 86. **Alienation under Seminole Agreement.**
 - 87. **Alienation of lands selected in the name of a deceased member of the tribe under the Seminole Supplemental Agreement.**
 - 88. **Alienation of homestead as affected by the Act of March 3, 1903.**
 - 89. **Involuntary alienation—Prohibition against—Seminole Nation.**
 - 90. **Act of April 21, 1904, applicable to allottee in Seminole Nation.**

§ 85. **Résumé of the provisions of Seminole Agreements imposing restrictions on alienation.**—The original Seminole allotment agreement¹ (Act July 1, 1898, c. 542, 30 Stat. 567), provided for the classification of Seminole lands into three classes and placed a valuation per acre on the land of each class as a basis for an equitable division thereof among the members and freedmen of the tribe. The agreement required the tribal lands to be divided among the members of the tribe, and freedmen were members, so that each should have an equal share thereof in value.

Each allottee was required to designate one tract of forty acres as a homestead, which was made inalienable and non-taxable in perpetuity. Each allottee was given the sole right of occupancy of the land allotted to him during the existence of the tribal government and until the members of the tribe became citizens of the United States. The chairman of the Commission to the Five Civilized Tribes was required to execute and deliver to each allottee a certificate describing the land allotted to him. The agreement also contained the following provision: "All contracts for sale, disposition, or encumbrance of any part of any allotment

¹ Reproduced in full as chapter 49.

made prior to date of patent shall be void." Deeds were required to be executed and delivered by the Principal Chief, conveying to each allottee all the right, title and interest of the members of the nation in the land so allotted. The Secretary of the Interior was required to approve these deeds, such approval to operate as a relinquishment of the interest of the United States in the lands conveyed.

A supplemental agreement² was made with the Seminoles, but this did not deal with the subject of restrictions upon alienation. It provided for the extension of the Seminole membership rolls, so as to include children born to Seminole citizens up to and including the 31st day of December, 1899, and prescribed the line of descent of allotted Seminole lands in certain particulars.

The Seminole Supplemental Agreement, though making no mention of the right of alienation or restrictions thereon, provided that in case of the death of a member of the tribe after the 31st day of December, 1899, the lands and other property which he "would have been entitled to if living, shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the state of Arkansas, and be allotted and distributed to them accordingly. * * *" This provision is somewhat similar to section 22 of the Choctaw-Chickasaw Supplemental Agreement, section 20 of the Cherokee Allotment Agreement and section 28 of the original Creek Agreement, and seems to serve the same purpose served by those provisions.³

§ 86. **Alienation under Seminole Agreement.**—The only specific provision in the Seminole Agreement dealing with the subject of restrictions upon alienation is that providing that "all contracts for sale, disposition, or encumbrance of any part of any allotment made prior to date of patent shall be void." This provision is an effective restriction upon the

² Reproduced in full as chapter 50.

³ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

right to alienate both homestead and surplus prior to issuance of patent. This prohibition is sufficiently broad, and was undoubtedly intended not only to prohibit alienation by the allottee, but also by his heirs, during the restricted period, to wit, until patent issued.⁴ The removal of all restrictions upon the right to alienate any part of the land so allotted would operate to authorize the alienation of such lands, notwithstanding the prohibition contained in the original agreement.

Allotments were made to freedmen of the Seminole Tribe as though they were members of the tribe, and subject to the same restrictions on alienation as lands allotted to regularly enrolled members of said tribe by blood.⁵

Subsequent legislation affecting the right of alienation of allotted and inherited land of the Seminole Nation is found in the Acts of March 3, 1903,⁶ April 21, 1904,⁷ April 26, 1906,⁸ and May 27, 1908.⁹

§ 87. Alienation of lands selected in the name of a deceased member of the tribe under the Seminole Supplemental Agreement.—Under the second section of the Seminole Supplemental Agreement, if an enrolled member of the tribe died after the 31st day of December, 1899, and before receiving his share of tribal lands in allotment, lands to which he would have been entitled, if living, are to be allotted and

⁴ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792; *Stout v. Simpson*, 34 Okl. 129, 124 Pac. 754.

⁵ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841.

⁶ For a discussion of the effect of the Act of March 3, 1903, upon the right of alienation of the Seminole homestead, see section 88.

⁷ For the effect of the Act of April 21, 1904, upon the right to alienate by adult allottees of their surplus lands, see sections 90 and 93 to 95.

⁸ For the effect of the Act of April 26, 1906, upon the right of alienation of allotted and inherited Seminole lands, see sections 96 to 104.

⁹ For the effect of the Act of May 27, 1908, upon the right of alienation of allotted and inherited Seminole lands, see chapter 15.

descend and be distributed to his heirs in accordance with the laws of descent and distribution of the state of Arkansas, with the exception that they shall go first to the mother, instead of to the father, and then to the brothers and sisters, instead of the father.

Are the lands thus selected subject to restriction upon alienation, or do they descend free from all restrictions upon alienation, as do lands allotted in the name of a deceased member of the tribe under the Choctaw-Chickasaw Supplemental Agreement, Cherokee Agreement, and Creek Original and Supplemental Agreements?

In reason, the same rule should be applied as has been applied to land allotted to the heirs or in the name of deceased members of other of the Five Civilized Tribes.¹⁰

§ 88. Alienation of homestead as affected by the Act of March 3, 1903.—The Indian Appropriation Act of March 3, 1903, contains a provision that the homestead referred to in the Seminole Agreements shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed, and that a separate deed shall be issued therefor. This language fixes the status of right to alienate Seminole homesteads subsequent to the 3d day of March, 1903. The status so fixed is that such lands shall be inalienable during the lifetime of the allottee, but not to exceed twenty-one years from date of deed or patent. Such lands are by necessary implication alienable, under the terms of said act, by the heirs immediately upon the death of the allottee.¹¹

§ 89. Involuntary alienation—Prohibition against—Seminole Nation.—The provision of the Seminole Agreement preventing contracts of sale or incumbrance prior to date

¹⁰ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

¹¹ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847.

of patent is much broader in its scope than the special provisions of the other allotment agreements. It clearly prohibits any incumbrance of allotted lands prior to date of patent, but it has been held that a removal of restrictions authorizes an incumbrance by mortgage before issue of patent.¹²

§ 90. **Act of April 21, 1904, applicable to allottee in Seminole Nation.**—There were numerous persons residing in the Seminole Nation having the right of citizenship therein, who had prior to April 21, 1904, received allotments, and who were not of Indian blood. Possibly some received allotments after April 21, 1904, although the Seminole lands were the first to be allotted. Upon the approval of the Act of April 21, 1904, removing all restrictions upon alienation of surplus lands of all adult persons who were allottees of the Five Civilized Tribes, and who were not of Indian blood, conveyances were made by many Seminole allottees before the issuance of patent, upon the assumption that the removal of all restrictions upon the right to alienate removed all impediments to alienation. The provision in the Seminole Agreement that all contracts for the sale, disposition or incumbrance of any part of the allotment made prior to the date of patent shall be void, was generally regarded as a restriction upon alienation, and therefore repealed by the full and comprehensive language of the Act of April 21, 1904, removing all restrictions upon alienation of surplus lands of adult allottees who were not of Indian blood.

No patents had been issued to Seminole allottees at the time of the passage of the Act of April 21, 1904, and perhaps none have yet been issued, although under the provisions of the Act of April 26, 1906, authority was given to execute and deliver these patents before the expiration of the tribal government. If the effect of this act is not to remove all existing obstacles to the alienation of the surplus lands of

¹² *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847.

Seminole allottees who are not of Indian blood, the inclusion of Seminoles in the provision amounts to nothing, and Congress must stand convicted of a grievous oversight or a grave misconception of what it had previously done.

The Supreme Court of the state of Oklahoma gave this statute most careful, thorough and exhaustive consideration, reaching the conclusion that of necessity it operated to remove all impediments to the alienation of surplus lands of adult Seminole allottees not of Indian blood.¹³ The Supreme Court of the United States has fully sustained the conclusion of the Supreme Court of Oklahoma and held that the Act of April 21, 1904, removed all restrictions on alienation by deed¹⁴ or mortgage¹⁵ by Seminole allottees. The conveyances involved in the cases in both the Supreme Court of the state and the United States were made prior to issuance of patent. No patents had been issued to Seminole allottees prior to April 21, 1904, and perhaps none prior to September 1, 1913, although authority was given to execute and deliver these patents before the expiration of the tribal government. The effect of the Acts of April 26, 1906, and May 27, 1908, upon the right to alienate allotted and inherited lands of Seminole allottees is considered elsewhere.

¹³ *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792.

¹⁴ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841.

¹⁵ *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847.

CHAPTER 14

SUBSEQUENT LEGISLATION AFFECTING RIGHT OF ALIENATION—FIVE CIVILIZED TRIBES

- § 91. Act of May 27, 1902, not applicable.
- 92. Alienation under Act of March 3, 1903.
- 93. Removal of restrictions by Act of April 21, 1904.
- 94. Removal by Secretary of restrictions under provision of act of April 21, 1904.
- 95. Alienation of inherited lands where restrictions have been removed by or under the Act of April 21, 1904.
- 96. Act of April 26, 1906, extending restrictions on alienation by full-blood allottees.
- 97. Effect of curative provision of Act of April 26, 1906.
- 98. Right of alienation of inherited lands of Five Civilized Tribes as affected by section 22 of the Act of April 26, 1906.
- 99. Alienation—Removal of restrictions on—By adult heirs of less than the full blood—Section 22 of Act of April 26, 1906.
- 100. Alienation by minors of inherited lands under section 22 of the Act of April 26, 1906.
- 101. Joint conveyances by adult and minor heirs under authority of section 22 of the Act of April 26, 1906.
- 102. Conveyance by full-blood heirs under section 22 of Act of April 26, 1906.
- 103. Date of death as affecting right of alienation under section 22 of the Act of April 26, 1906.
- 104. Freedmen lands—Alienation of—Purchased under section 16 of the Act of April 26, 1906.

§ 91. Act of May 27, 1902, not applicable.—The Indian Appropriation Bill, approved May 27, 1902, contained a provision authorizing alienation by heirs of inherited lands covered by trust patent with the approval of the Secretary of the Interior.¹ Inasmuch as none of the allottees of the Five Civilized Tribes received trust patents for their lands, there is no reasonable ground upon which this statute could be held applicable to inherited lands of former members of the Five Civilized Tribes. Some time after the passage of the act an application was submitted to the Secretary of the Interior thereunder to approve a deed of lands inherited from an allottee of one of the Five Civilized Tribes. He declined

¹ United States Fidelity & Guaranty Co. v. Hansen (Okl.) 129 Pac. 60.

approval, assigning as a reason therefor that Congress had, by special legislation applicable to each of the Five Civilized Tribes, covered the matter of alienation and restrictions thereon of allotted and inherited lands of members of such tribes. The interpretation given by the Secretary has ever since been acquiesced in, and is believed to be the correct one.

§ 92. Alienation under Act of March 3, 1903.—The Indian Appropriation Bill of March 3, 1903 (32 Stat. 996, c. 994), contained the following proviso: "And provided further, that nothing herein contained shall prevent the survey and platting, at their own expense, of town sites by private parties where stations are located along the line of railroads, nor the unrestricted alienation of lands for such purposes, when recommended by the Commission to the Five Civilized Tribes and approved by the Secretary of the Interior."

Under rules and regulations prescribed by the Secretary of the Interior, the Commission made an investigation of the application of the Indian to alienate his land for townsite purposes, and if they believed it to be for his best interest to do so they permitted a deed to be executed and the money to be paid in their presence, after having secured authority from the Secretary to approve the sale, and thereupon they approved the deed. There can be no question about the validity of the title to the land thus alienated. The provisions of this act are applicable to the allotted and inherited lands of members and freedmen of each of the Five Civilized Tribes.

§ 93. Removal of restrictions by Act of April 21, 1904.—The Act of April 21, 1904, is properly divisible, for purposes of consideration, into two parts. The first part of the act removes all restrictions upon alienation of lands of the adult allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except as to homesteads. The second part authorizes the Secretary of the Interior to remove restrictions under such rules and regulations as he

may prescribe. The provisions of this act are applicable to all adult persons enrolled as freedmen or members of either of the Five Civilized Tribes not of Indian blood. It applies to all lands except homesteads. It will be observed that the direct language of the act is: All restrictions upon alienation of the lands of all allottees of either of the Five Civilized Tribes, who are not of Indian blood, except minors, are, except as to homesteads, hereby removed.

The effect of this act is to remove all restrictions on alienation of surplus allotments of adult allottees of the Five Civilized Tribes who are not of Indian blood.²

It was contended by the Attorney General of the United States, in what is known as "The 30,000 Land Suits," that this act did not authorize alienation before issuance of patent.

The word "allottee" has been uniformly construed to mean a person who has selected and had set apart to him the land he desires to take in allotment. A "patentee" is a person to whom a patent has been issued. They are entirely different and distinct classes, although including the same persons at different stages in the passing of title. A patentee, as to the Five Civilized Tribes, must have been an allottee, while an allottee does not become a patentee until he receives his patent. The certificate of allotment is issued as of date of filing, and is made conclusive evidence of the allottee's right to the land.

It was specially insisted that, in view of the provisions of the Seminole Agreement prohibiting sale, disposition, or incumbrance, of any part of allotment prior to date of patent, the effect of this act as applied to the Seminole allottees was

² *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; *United States v. Jacobs*, 195 Fed. 707, 115 C. C. A. 507; *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792; *Landrum v. Graham*, 22 Okl. 458, 98 Pac. 432; *Eldred v. Okmulgee Loan & Trust Co.*, 22 Okl. 742, 98 Pac. 929; *Parkinson v. Skelton*, 33 Okl. 813, 128 Pac. 131; *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244; *Iowa Land & Trust Co. v. Dawson (Okl.)* 134 Pac. 39.

to remove restrictions effective only when patent issued. The Supreme Court of the United States held this contention not to be tenable and declared the rule to be applied in the following language: "The adult grantors stood in precisely the same position after the Act of 1904 as though they had received their allotments without any restrictions upon their right to alienate the interest thus acquired. It is insisted, however, that this interest was not of such a character as to be susceptible of transfer. This is not a tenable proposition. * * * The lands were allotted to the members of the tribe in severalty, so that each should have his distinct proportion. The allotments constituted their respective shares of the tribal property set apart to them as such, and while the execution of the deeds was deferred, each had meanwhile a complete equitable interest in the land allotted to him. * * * The interest of the allottee was a descendible interest. * * * The inalienability of the allotted lands was not due to the quality of the interest of the allottee, but to the express restriction imposed." ³

A similar interpretation has been given to the provisions of this act by the Circuit Court of Appeals for the Eighth Circuit and the Supreme Court of the State of Oklahoma, in its application to allotted and inherited lands of members of other tribes, as well as of members of the Seminole Tribe.⁴

The lands of the allottees to whom this act applies descend free from all restrictions upon alienation. Lands allotted in the name of a deceased member of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribe under the various provisions of the allotment agreements pass free from all restrictions upon alienation to the heirs of such persons, so there is no occasion for the application of the above section to members of the tribe who died prior to the selection of their allotment. There is no reason, however, why it should

³ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847.

⁴ See cases cited in note 2.

not apply, except that there are no restrictions to be removed in such cases.

§ 94. **Removal by Secretary of restrictions under provision of Act of April 21, 1904.**—Under what may be considered the second paragraph of the above, a special department has been created in the office of the Indian agent for the purpose of investigating and determining what members of said tribes by blood are competent to handle their own affairs and should be given the privilege of alienating their surplus lands. The Indian agent in his own proper person, or through a subordinate, investigates the application of an Indian allottee for the removal of restrictions upon the alienation of his surplus land, and reports to the Secretary of the Interior his finding, with a recommendation as to whether the application should be granted. If the Secretary of the Interior is of the opinion that the petition should be granted, he indorses upon the recommendation of the Indian agent "Approved" and causes the same to be recorded in his own office and returned to the United States Indian agent. The Indian agent causes the certificate of removal of restrictions to be recorded in the office of the Commission to the Five Civilized Tribes, and delivers the same to the allottee.

On February 19, 1906, the Secretary promulgated rules and regulations by the terms of which, when he had indorsed his approval upon an order removing restrictions, the same should not become effective for thirty days; in other words, the indorsement was "Approved, effective thirty days from date hereof." The right of the Secretary to thus restrain the alienation under an order removing restrictions has been challenged. The statute, however, expressly provides that the Secretary shall remove these restrictions under such rules and regulations as he may prescribe. "Such rules and regulations as he may prescribe" within the purview of this statute have the force of law, and it is believed that there is no good reason why the Secretary cannot attach this condition to his approval.

In effect it has been expressly held that this regulation so prescribed by the Secretary is within the authority conferred upon him by the provisions of the act, and that a conveyance made within the thirty days' interim is as ineffectual to pass title as if consummated prior to the making of the order by the Secretary removing such restrictions.⁵ The authority of the Secretary to remove restrictions under this act extended to the allotted lands of adult allottees of all of the Five Civilized Tribes, except homesteads.

§ 95. Alienation of inherited lands where restrictions have been removed by or under the Act of April 21, 1904.—Giving due effect to the language of the Act of April 21, 1904, removing restrictions on alienation and authorizing the Secretary to remove such restrictions, it would seem not to be open to controversy that the lands as to which restrictions are removed by or under the provisions of said act are alienable by the heirs as fully as by the allottees.

Notwithstanding the apparently plain and explicit provisions of this act, the contention has been urged that the removal of restrictions thereunder is personal to the allottee and authorizes alienation by him only, and that upon his death the lands become subject to such restrictions on alienation as would have been applicable, had not the restrictions been removed by or under said act. This contention is untenable. The courts have uniformly held that lands as to which restrictions are removed by or under the provisions of this act descend to the heirs free from restrictions on alienation,⁶ subject to the possibility that restrictions were reimposed, where the heirs are full-bloods, by the Act of April 26, 1906.

§ 96. Act of April 26, 1906, extending restrictions upon alienation by full-blood allottees.—Section 19 of the Act of April 26, 1906, prohibits alienation, or incumbrance in any

⁵ *Simmons v. Whittington*, 27 Okl. 356, 112 Pac. 1018.

⁶ *United States v. Jacobs*, 195 Fed. 707, 115 C. C. A. 507; *Parkinson v. Skelton*, 33 Okl. 813, 128 Pac. 131.

manner, by full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes, of lands allotted to them, for a period of twenty-five years from April 26, 1906. The right to remove such extended restrictions by Congress was specifically reserved.

It is further provided that the quantum of Indian blood possessed by any member of the tribe shall be determined by the rolls of citizens of such tribe approved by the Secretary of the Interior. The constitutionality of this act, in so far as it extends restrictions upon alienation, has been sustained by the Supreme Court of the United States,⁷ and, in so far as it makes the right of alienation dependent upon the quantum of Indian blood, as shown by the rolls of citizens, has been sustained by the United States District Court for the Eastern District of Oklahoma and by the Supreme Court of the state of Oklahoma, but limited in its application to transactions subsequent to April 26, 1906. The constitutionality, effect and application of this section, and a similar provision found in the Act of May 27, 1908, are more fully discussed under the title "Age and Quantum of Indian Blood."⁸

§ 97. Effect of curative provision of Act of April 26, 1906.—Numerous conveyances of allotted lands were made in many of the Five Civilized Tribes before the issuance of patent, and frequently before the issuance of an allotment certificate. This is especially true as to the Choctaw and Chickasaw Nations with reference to lands allotted in the name of a deceased member of the tribe and which were free from all restrictions upon alienation, and in the Seminole Nation with reference to freedmen lands after April 21, 1904.

The right to convey before patent was challenged in many suits instituted to recover such lands on the ground that the conveyance thereof was void because made before issuance of patent. Congress thereupon gave its own interpre-

⁷ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

⁸ See chapter 18.

tation to the original allotment agreements and declared that such interpretation should be applicable to all cases involving the validity of a conveyance of lands of allottees of any of the Five Civilized Tribes, where challenged upon the ground of invalidity solely because made before the issuance of patent.

That interpretation and declaration of the rule to be applied is found in the following language in a proviso to section 19 of the Act of April 26, 1906: "That conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed. * * *"

The validity of this statute was assailed upon the ground that it sought to make effective conveyances that were ineffectual prior to its enactment. The constitutionality of this statute has not been adjudicated, because the courts have uniformly held that without the statute the right to alienate was not dependent upon the issuance of patent. Congress was undoubtedly aware that the validity of conveyances were being assailed solely upon the ground that patent had not issued at the time they were made.

The purpose of the act was to prevent a misconstruction of the original agreements and the giving to same a meaning different from that which Congress intended they should have in the first instance. The statute merely gives to the conveyance the force and effect it was intended to be given by the parties, and that Congress intended to give it. It does not destroy a vested right, because it may not be said that a man has a vested right to repudiate his obligation, or to have a statute interpreted to mean that which the legislative body enacting it did not intend that it should mean. The rule with regard to curative statutes is that if the objection to the validity of the instrument, or that which de-

prives it of validity, was such that it might have been dispensed with, or obviated by a previous statute, it may be done by subsequent legislation.⁹ This statute clearly falls within this rule. The doctrine of relation has no application to a conveyance which is wholly void, and a subsequently acquired title will not pass thereunder.¹⁰

Speaking with reference to the condition which this statute was enacted to meet, and the effect of the statute, the Supreme Court of the United States uses the following language:¹¹ "But as the lands had been duly allotted the right to patent was established; and there was no restriction in cases under paragraph 22 upon alienation of the lands prior to the date of patent. There was undoubtedly a complete equitable interest which, in the absence of restriction, the owner could convey. *Doe ex dem. Mann v. Wilson*, 23 How. 457, 16 L. Ed. 584; *Crews v. Burcham*, 1 Black, 352, 17 L. Ed. 91; *Jones v. Meehan*, 175 U. S. 1, 15-18, 20 Sup. Ct. 1, 44 L. Ed. 49. And any contention that the conveyances were invalid, solely because they were made before the issuance of patent—the lands not being under restriction—would be met by the proviso contained in section 19 of the Act of April 26, 1906. * * *

⁹ *Barr v. Gratz*, 4 Wheat. 213, 4 L. Ed. 553; *Bush v. Marshall*, 6 How. 284, 12 L. Ed. 440; *French v. Spencer*, 21 How. 228, 16 L. Ed. 97; *Doe ex dem. Mann v. Wilson*, 23 How. 457, 16 L. Ed. 584; *Massey v. Papin*, 24 How. 363, 16 L. Ed. 734; *Elwood v. Flannigan*, 104 U. S. 563, 26 L. Ed. 842; *Jenkins v. Collard*, 145 U. S. 546, 12 Sup. Ct. 868, 36 L. Ed. 812; *Dunn v. Barnum*, 51 Fed. 355, 2 C. C. A. 265; *Kline v. Ragland*, 47 Ark. 117, 14 S. W. 474; *Stanway v. Rubio*, 51 Cal. 41; *Steeple v. Downing*, 60 Ind. 478; *Clark v. Hall*, 19 Mich. 356; *Fisher v. Hallock*, 50 Mich. 463, 15 N. W. 552; *Douglass v. McCoy*, 5 Ohio, 522; *Bernardy v. Colonial & U. S. Mortg. Co.*, 17 S. D. 637, 98 N. W. 166, 106 Am. St. Rep. 791; *Baldwin v. Root*, 90 Tex. 546, 40 S. W. 3; *Nicodemus v. Young*, 90 Iowa, 423, 57 N. W. 906; *Johnson v. Newman*, 43 Tex. 628; *Harrison v. Faulkner* (Tex. Civ. App.) 21 S. W. 984; *Spless v. Neuberg*, 71 Wis. 279, 37 N. W. 417, 5 Am. St. Rep. 211; 19 Cent. Dig. cols. 468, 469, §§ 315, 316.

¹⁰ *Bledsoe v. Wortman*, 35 Okl. 261, 129 Pac. 841; *Berry v. Summers*, 35 Okl. 426, 130 Pac. 152.

¹¹ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

There is no longer any doubt of the right to alienate before the issuance of patent, except in those particular cases in which the statute prohibits alienation until the issuance thereof. As to those cases a removal of all restrictions permits alienation before the issuance of patent.¹²

§ 98. Right of alienation of inherited lands of Five Civilized Tribes as affected by section 22 of the Act of April 26, 1906.—Section 22 of the Act of April 26, 1906, is somewhat complex in its nature and has been the subject of more litigation, perhaps, than any other single section of any of the allotment agreements or statutes, with the possible exception of the Creek Agreements involving descent. The statute may be, for purposes of consideration, divided into three parts:

(1) That which authorizes adult heirs of less than the full blood to convey inherited lands wherever such lands have been selected in allotment, or when a deed or patent has been issued therefor.

(2) Authorizing minor heirs to join in the sale of such inherited lands by a guardian duly appointed by the proper United States court for the Indian Territory, or in the case of the organization of a state then by a proper court of a county in which the minors reside or in which the real estate is situated, upon order of court made upon petition filed by the guardian.

(3) Requiring of conveyances made under the provisions of said act by heirs of the full blood to be approved by the Secretary of the Interior under such rules and regulations as he may prescribe.

§ 99. Alienation—Removal of restrictions on—By adult heirs of less than the full blood—Section 22 of Act of April 26, 1906.—Section 22 of the Act of April 26, 1906, provides “that the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or

¹² *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841.

to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the land inherited from such decedent. * * *

This statute is clear and explicit. It authorizes the adult heir, with the limitation contained in the proviso "of less than the full blood," to sell and convey inherited lands free from all restrictions on alienation, and such has been the interpretation of the act by courts having occasion to consider it.¹³

§ 100. Alienation by minors of inherited lands under section 22 of the Act of April 26, 1906.—Section 22 of the Act of April 26, 1906, provides "that the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the lands of the tribe to which he or she belonged, may sell and convey the lands inherited from such decedent and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian."

This statute will be considered from the standpoint of a removal of restrictions on alienation by authorizing a sale of lands otherwise inalienable jointly with an adult heir.

It is not believed that it was the purpose of this act to impose restrictions on the alienation of the alienable lands of minor heirs. Construing this statute, the Supreme Court of the state of Oklahoma said:¹⁴ "It authorized all such

¹³ *Shulthis v. McDougal*, 170 Fed. 529, 95 C. C. A. 615.

¹⁴ *Wilson v. Morton*, 29 Okl. 745, 119 Pac. 213.

adult heirs, except those of full blood, to sell their inherited lands without the approval of any one; but full-blood adult heirs could convey only with the approval of the Secretary of the Interior. The act does not undertake to remove generally the restrictions upon alienation by minor heirs. It does authorize under certain conditions certain minor heirs to convey. It is important in the construction of the statute and in arriving at the intent of the legislative will to notice the class of minor heirs whose inherited lands are authorized to be sold. The classification of those who may sell and those who may not sell is not made upon the basis of the quantum of Indian blood of the heirs, as has been the case in all instances before and since this act, where Congress has attempted to remove restrictions upon the power of alienation of certain members of these tribes, but to retain them as to others. The power of the minor heir to sell is not made dependent upon whether he is a full-blood Indian or less than a full blood, nor dependent upon his age, nor upon whether a sale of his land is necessary to his education and support, or to be made for the purpose of investment. His authority to sell by his guardian is made dependent upon the existence of an adult heir, and, where there is an [no] adult heir, authority is not given to the minor to sell alone and separately his interest, but he may, acting through his guardian, upon order of court, join the adult heir in a sale. The act does not specifically prescribe that the sale may be made for the purpose or under the procedure prescribed by the statute then in force in the Indian Territory, authorizing and providing for the sales of real estate of other minors than Indians; and, if said statutes or the statutes in force at the time of this sale ever had any application to the sales of minors' lands made under said section 22 of the federal act, they must be held to have done so by implication, and not by any express provision of the act. If Congress intended that the statutes in force in the Indian Territory at the time of the passage of

this act should fix the procedure to be followed in making such sales at the passage of the act, it may be assumed that Congress knew what such statutes were; and, if the procedure prescribed by the statutes would in a large measure defeat the legislative purpose in permitting minor heirs to join the adult heirs in the sale, the act ought not to be held by mere implication to provide that such sales should be governed by those statutes. In placing restrictions upon the alienation by Indian allottees of the Five Civilized Tribes of their allotted lands, the legislative purpose was to protect the Indian against his own improvidence, against the cunning of those who, through cupidity, might undertake to procure from them their lands at inadequate prices, and to protect them against the superior business ability of his [their] more experienced white neighbors until such Indians might become familiar with their lands and their value, and sufficiently adapted to the new condition in which they were placed by a division of their tribal property that they could realize the full value of their lands when the same were placed upon the market by them. In authorizing the adult heirs to sell their inherited lands, Congress correctly anticipated that many cases would arise in which there would be both adult and minor heirs, each holding an undivided interest in the lands of a deceased allottee; and, unless some provision was made for the minor heirs to join with the adult heirs in the sale of the entire property, the very property which the act authorizes the adults to sell would be attended with conditions that would greatly tend to prevent those Indians whom the government had theretofore kept under its protecting care from securing the market value of their interest in their inherited estates; and if the adult heirs sold their lands, then the minor heirs, on becoming of age, or when the restrictions should be removed from their power to sell, would find their opportunities to sell to any one except the purchaser from the adult heir greatly lessened, and the value of their property greatly de-

preciated on that account, before they had power or opportunity to convey. By permitting the adult heirs and the minor heirs to join in one sale of the entire property no embarrassment need arise in making the sale because the property is owned by various persons.”¹⁵

§ 101. Joint conveyances by adult and minor heirs under authority of section 22 of the Act of April 26, 1906.—The provision of section 22 of the Act of April 26, 1906, following the authority of the adult heirs to convey inherited lands without restrictions, is: “And if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed,” etc.

What is the proper procedure for the sale of a minor's interest under the provisions of this statute? The minor is authorized to join in the sale with the adult heir, not necessarily in the same conveyance, but in the sale as to which the conveyance is the consummation and the effective means of transfer of title.

Does the Act of April 26, 1906, prescribe the procedure, or must the sale be made, so far as the minor's interests are concerned, in accordance with the statutes regulating the sale through the probate courts of the lands of minors?

The first impression of this act is that the sale should be in accordance with the usual mode of making sales of the lands of minors. The Supreme Court of the state, however, after a most careful consideration of the statute, has determined that it is not necessary, to the validity of a sale of the interest of a minor heir jointly with adult heirs, that the ordinary procedure prescribed by law for the sales of the lands of minors should be followed.¹⁶ In fact, a doubt is expressed as to whether a sale so made would be a compliance with the Act of April 26, 1906. It is said that the

¹⁵ In re Billy, 34 Okl. 120, 124 Pac. 608-611; In re Davis' Estate, 32 Okl. 209, 122 Pac. 547.

¹⁶ Wilson v. Morton, 29 Okl. 745, 119 Pac. 213.

probate code authorizes the sale of the land of a minor when necessary for his education or support, or to be made for the purpose of investment, etc.; that the authority to sell under section 22 is dependent upon the existence of an adult heir, and that where there is no adult heir authority is not conferred upon the minor to sell his separate interest; that he may, acting through his guardian, upon order of court, join the adult heir in the sale. This reasoning is undoubtedly sound in so far as it is used to support the authority of the minor, through his guardian, to participate in a joint sale with adult heirs, merely upon the authority of the probate court and without proceeding to sell in accordance with the probate code. At the time of the enactment of this statute the members of the Five Civilized Tribes in the Indian Territory were citizens of the United States and as fully subject to the jurisdiction of the courts of the United States in the Indian Territory as were other citizens of the United States who were not members of the Five Civilized Tribes. The statutes of Arkansas in force in the Indian Territory, authorizing the sales of the lands of minors, were applicable to minor Indian allottees, and to minor Indian allotted lands, and to minor inherited lands, and to minor Indian heirs as fully as to other minors, subject only to the condition that sales could not be authorized as against restrictions upon alienation. To say that the provision of section 22 of the Act of April 26, 1906, took away from the courts of the United States in the Indian Territory, exercising probate jurisdiction, the authority to authorize the sale of the unrestricted inherited lands of an Indian minor, is to read into the act a most onerous condition not to be found in its language.

Such a rule applied to the right of a probate court to order the sale of the lands of a minor, where not subject to restrictions on alienation, would make the same wholly dependent upon the wishes of the adult heir.

It is believed that a fair and reasonable interpretation of

this statute is to say that, where the heir is of less than the full blood and the lands were not, at the time of the passage of the act, alienable, the guardian of the minor may join in a sale thereof with the adult heir upon order of the county court; that said statute in no sense operated to divest the United States court in the Indian Territory and its successor, the county court of the state of Oklahoma, of jurisdiction to order the sale of the alienable lands of a minor under the probate procedure in force at the time of making such order.

How far the provisions of this act are superseded, or to what extent they were repealed, by the Act of May 27, 1908, does not seem to have been decided in any of the adjudged cases.

§ 102. Conveyance by full-blood heirs under section 22 of Act of April 26, 1906.—Following certain provisions authorizing adult heirs to convey inherited lands and minor heirs to join with such adults by their guardian is an independent sentence reading as follows: "All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe."

The great majority of lawyers in the Indian Territory originally interpreted this provision as a mere proviso to the preceding part of the section, and applicable only to conveyances made under the provisions of said act, and which could not otherwise have been made. That Congress did not intend, by the declaration that all conveyances made under this provision, etc., shall be subject to the approval of the Secretary of the Interior, to make all conveyances by full-blood heirs, including those of lands as to which restrictions had previously been removed, or ceased to exist, subject to the approval of the Secretary. The Supreme Court of the state of Oklahoma held that section 22 removed restrictions except as to full-blood heirs, and as ap-

plied to the Creek Nation left their authority to convey in the same condition as before the passage of the act. That is to say, before the passage of the act¹⁷ they could sell with the approval of the Secretary and not otherwise. The Supreme Court of the United States, after a very elaborate consideration of the provisions of this act, held¹⁸ "that, while it permitted inherited lands to be conveyed by full-blood Indians, it nevertheless intended to prevent improvident sales by this class of Indians, and made such sales valid only when approved by the Secretary of the Interior." The court then considered the question of the constitutionality of the act and came to the conclusion that it was well within the power of Congress. It may be noted that at the time the Act of April 26, 1906, became effective, the grantor in the conveyance, and who was assailing the legality of the same, held his lands, both allotted and inherited, subject to restrictions upon alienation and without authority to convey except with the approval of the Secretary of the Interior.

§ 103. Date of death as affecting right of alienation under section 22 of the Act of April 26, 1906.—Immediately following the approval of the above act it was construed by the Department of the Interior as applicable to conveyances of inherited lands where the allottee had died prior to April 26, 1906, as well as where he had died subsequent to that date. This was the practically uniform and uninterrupted interpretation of this statute by the Department until the 7th day of June, 1911, when the Secretary submitted the question of his jurisdiction to approve conveyances by full-blood heirs where the allottee died prior to April 26, 1906, to the Attorney General of the United States.

¹⁷ *Western Inv. Co. v. Tiger*, 21 Okl. 630, 96 Pac. 602.

¹⁸ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 81 Sup. Ct. 578, 55 L. Ed. 738.

The Attorney General held that the Secretary had no jurisdiction to consider or approve a conveyance of inherited Indian lands where the allottee died prior to April 26, 1906.¹⁹ This was in line with and carrying out the spirit and policy evidenced by a former opinion construing the Act of May 27, 1908.²⁰

This construction by the Attorney General, if correct, renders null and void a great number of conveyances approved by the Secretary in the five-year interval between the passage of the act and the opinion of the Attorney General, where the ancestor died prior to April 26, 1906, and enormous sums of money invested upon departmental approval would, if the Attorney General's interpretation is correct be confiscated.

The opinion of the Attorney General is based upon the assumption that to apply the act to the alienation by heirs where the ancestor died prior to April 26, 1906, would make it retroactive in effect. This opinion evidences a complete misapprehension of what constitutes retroactive legislation. It came after a decision by the Circuit Court of Appeals which held that the Act of April 26, 1906, empowered an heir to sell and convey land absolutely without the approval of the Secretary of the Interior, where the ancestor died in May, 1901, substantially five years before the passage of the Act of April 26, 1906.²¹

This opinion of the Attorney General also came shortly after an opinion of the Supreme Court of the United States construing the Act of April 26, 1906, and holding that the Secretary's approval was necessary to the conveyance by a full-blood heir whose ancestor died prior to April 26, 1906, where the lands were subject to restrictions on alienation at the time of the approval of said act.²²

¹⁹ 29 Opinions Attorney General, 131.

²⁰ 27 Opinions Attorney General, 530.

²¹ *Shulthis v. McDougal*, 170 Fed. 529-536, 95 C. C. A. 615.

²² *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

In the last-mentioned case a brief was filed on behalf of the United States by a Special Assistant Attorney General in which it was strenuously urged that the Act of April 26, 1906, applied to the conveyance involved, notwithstanding the ancestor died long prior to the date of said act.

§ 104. **Freedmen lands—Alienation of—Purchased under section 16 of the Act of April 26, 1906.**—Under section 16 of the Act of April 26, 1906, freedmen of each of the Five Civilized Tribes were given a preference right to purchase out of the residue of the lands of each of said nations after allotment was completed, land enough, at the appraised value, to equal, with that already allotted to them, forty acres in area.

Freedmen very generally took the benefit of the preference right granted to purchase sufficient lands, together with those previously taken in allotment, to amount to forty acres in area. These lands so purchased were alienable without restrictions.

CHAPTER 15

RESTRICTIONS ON ALIENATION—FIVE CIVILIZED TRIBES— AS AFFECTED BY ACT OF MAY 27, 1908

- § 105. Scope of this title.
- 106. Rule for interpretation of act.
- 107. Intermarried whites.
- 108. Freedmen.
- 109. Mixed-blood Indians having less than half Indian blood.
- 110. Allottees having more than half and less than three-fourths Indian blood—As to surplus lands.
- 111. Allottees enrolled as mixed-blood Indians having half or more than half Indian blood—Homesteads.
- 112. Allotted lands of full bloods and mixed bloods of three-fourths or more Indian blood.
- 113. Alienation by heirs of less than half blood.
- 114. Alienation of homestead inherited from an allottee of one-half or more Indian blood leaving issue born subsequent to March 4, 1906.
- 115. Alienation of inherited lands by full bloods.
- 116. Court having jurisdiction of settlement of estate of deceased allottee.

§ 105. Scope of this title.—Under this title will be discussed the Act of May 27, 1908, as affecting the right of alienation of allotted and inherited lands of members of the Five Civilized Tribes.¹ Wills, leases, etc., will be considered under separate titles as will the subjects of eminent domain, age and quantum of Indian blood, taxation, mineral leases, conveyances before removal of restrictions, jurisdiction of probate courts, etc.

The application of the Act of May 27, 1908, to allotted and inherited Indian lands may be classified as follows:

1. Intermarried whites, all allotted lands.
2. Freedmen, all allotted lands.
3. Mixed-blood Indians of less than one-half Indian blood, all allotted lands.
4. Mixed-blood Indians having half or more and less than three-quarters Indian blood, surplus lands.

¹ Act May 27, 1908, reproduced in full as chapter 53.

5. Allottees enrolled as mixed bloods having half or more of Indian blood, homesteads.

6. Full bloods and enrolled mixed bloods of three-quarter or more Indian blood, all allotted lands.

The provisions of said act as applicable to conveyances of inherited lands may be classified as follows:

1. By heirs of less than full blood.
2. By heirs of full blood.
3. By heirs of allottees of one-half or more Indian blood leaving issue born since March 4, 1906.

In each instance, in fixing the status of the right to alienate, minors are placed with adults of the same class; that is to say, wherever restrictions are removed as to adults they are likewise removed as to minors, and wherever restrictions are extended as to adults they are extended as to minors, and wherever modified as to adults they are modified as to minors. In other words, no distinction is made under this act between adult and minor allottees or heirs.

§ 106. Rule for interpretation of act.—Section 1 of the Act of May 27, 1908, contains the following provision: "The Secretary of the Interior shall not be prohibited by this act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act."

The last part of this sentence prescribes a rule of interpretation for the application of the provisions of the entire act. It is that "nothing in said act shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act."

In a recent case ² the United States District Court for the Eastern District of Oklahoma held that this provision applies only to restrictions theretofore removed by the Secretary of the Interior under authority of law and to restric-

² United States v. Shock, 187 Fed. 870.

tions removed by such acts of Congress as had theretofore been passed for the purpose not of imposing, but of removing, restrictions on alienation, and that this provision would not have the effect of relieving Cherokee allottees less than full bloods and of three-fourths blood or more from the operation of the act, inasmuch as the restrictions on alienation of surplus lands of such allottees resulted, not from a removal by an act of Congress or order of the Secretary, but from an expiration of the restrictions imposed under the allotment agreement.

In a more recent decision the Circuit Court of Appeals for the Eighth Circuit has taken a very different view of the act, and has held that it did not operate to reimpose restrictions in the particular class considered by the trial court in the case above mentioned.³

This provision, as construed by the trial court, would not prevent the reimposing of restrictions on alienation by other provisions of said act, if such restrictions had ceased merely by lapse of time. Under the construction given by the Circuit Court of Appeals, restrictions would not be reimposed, whether they had expired by lapse of time, had been removed by legislative act, or by order of the Secretary of the Interior. In the last-mentioned opinion it was held to be beyond the authority of Congress to reimpose restrictions, where they had fully expired or had been removed.

According to an estimate made when this act was under consideration, but for the exception above mentioned, restrictions would have been reimposed upon 1,125 Choctaw and Chickasaw allottees whose allotments aggregate 180,000 acres, and on 2,720 Cherokee allottees whose allotments aggregate 215,600 acres, and upon 900 Creek and Seminole allottees whose allotments aggregate 108,100 acres.

§ 107. **Intermarried whites.**—All lands, including homesteads of persons enrolled as intermarried whites, including

³ *Bartlett v. United States* (C. C. A.) 203 Fed. 410.

minors, are made free from all restrictions upon alienation on and after the 27th day of July, 1908. All restrictions on alienation of surplus lands of intermarried whites were removed by the Act of April 21, 1904. This is the first legislative provision, however, removing restrictions on the alienation of the homesteads of intermarried citizens. It is also the first act which includes minors in the class or classes from which the restrictions on alienation are removed.

§ 108. Freedmen.—All restrictions on alienation of the lands of persons enrolled as freedmen of either of the Five Civilized Tribes, including minors, are removed by this act. The allotments of freedmen of the Cherokee, Creek and Seminole Tribes were divided into homestead and surplus allotments, as were the allotments of members of those tribes.

The restrictions on alienation of surplus lands of the freedmen of these three tribes were removed, except as to minors, by the Act of April 21, 1904. The effect of the Act of May 27, 1908, as applied to the freedmen of these three tribes, is to remove all restrictions on alienation of all allotted lands of minors and all restrictions on alienation of homestead allotments of adults; that is to say, on and after the 27th day of July, 1908, the allotted lands of the freedmen of these three tribes, including those of minors, are free from all restrictions on alienation.

The allotments of Choctaw and Chickasaw freedmen were taken and held as homesteads. The Act of April 21, 1904, therefore, had no application to freedmen allotments in the Choctaw and Chickasaw Nations.

The effect of the Act of May 27, 1908, as applied to Choctaw and Chickasaw freedmen allotments, is to remove all restrictions on alienation as to both adult and minor allottees.

§ 109. Mixed-blood Indians having less than half Indian blood.—No distinction was made in any of the allotment

agreements in the right of alienation based on the quantum of Indian blood. The effect of the Act of May 27, 1908, as applied to mixed-blood Indians having less than half Indian blood, is to remove all restrictions on the alienation of all allotted lands, including those of minors, effective July 27, 1908. By this act Indians of less than half Indian blood are placed upon the same footing, so far as the right to alienate is concerned, as intermarried whites.

The effect of this provision, as applied to allottees of the Cherokee Nation, is to remove restrictions on alienation of surplus lands where the five-year period from date of patent has not expired, and to remove all restrictions on alienation of the homestead allotment of allottees of less than half Indian blood.

As applied to the Creek Nation, its effect is to remove restrictions on alienation of the homestead of all allottees of less than half Indian blood. The surplus lands of Creek allottees of less than the full blood had become alienable under section 16 of the Creek Agreement (Act June 30, 1902, c. 1323, 32 Stat. 503, proclaimed by President August 8, 1902, 32 Stat. p. 58 of Proclamations) on August 8, 1907, and consequently were not affected by this provision of the act.

As applied to the Choctaw and Chickasaw allottees, it operated to remove all restrictions on alienation of surplus lands of allottees having less than half Indian blood, where such restrictions had not expired under the one, three and five year clause of the Choctaw-Chickasaw Supplemental Agreement.

This provision also operated to remove all restrictions on alienation of the homestead of Choctaw and Chickasaw allottees of less than half blood, which restrictions were for the lifetime of the allottee, not exceeding twenty-one years.

The result in the Seminole Nation is the removal of restrictions on alienation of both the homestead and surplus lands of members of the Seminole Tribe of less than the half

blood. All allotted lands of members of the Seminole Tribe, enrolled as members by blood, were inalienable by the allottees prior to the effective date of this act.

§ 110. Allottees having more than half and less than three-fourths Indian blood—As to surplus lands.—The effect of the Act of May 27, 1908, as applied to the surplus allotments of allottees having more than half and less than three-fourths Indian blood, is different in the different tribes.

In the Cherokee Nation, where the restriction on alienation of surplus lands of five years from date of patent had not expired, the effect of the act was to remove all restrictions and render the lands alienable.

The provisions of this section have no application to the Creek Nation, because the surplus lands of the Creek allottees of less than the full blood became alienable August 8, 1907.

The application of the act to the Choctaw and Chickasaw allottees operates to remove all restrictions on alienation of surplus lands, where such restrictions had not expired under the one, three and five year clause of the Choctaw-Chickasaw Supplemental Agreement.

§ 111. Allottees enrolled as mixed-blood Indians having half or more than half Indian blood—Homesteads.—By the direct provisions of this act homesteads of allottees enrolled as mixed-blood Indians, having half or more than half Indian blood, are made inalienable until the 26th day of April, 1931. This is a direct extension of the restrictions on alienation of homestead allotments of the allottees of the Cherokee, Choctaw, Chickasaw, Creek and Seminole allottees. Homestead restrictions in each of these tribes were for the lifetime of the allottee, but in no event to exceed twenty-one years from date of certificate or deed.

§ 112. Allotted lands of full bloods and mixed bloods of three-fourths or more Indian blood.—The allotted lands,

homestead and surplus, of full-blood members of each of the Five Civilized Tribes and of mixed-blood Indians of each of said tribes having more than three-fourths Indian blood, are made inalienable, except where restrictions are removed by the Secretary of the Interior prior to April 26, 1931.

This is a re-enactment of the full-blood provision of section 19 of the Act of April 26, 1906, and an extension of such provision to mixed-blood allottees of three-fourths or more Indian blood, with an amendment conferring upon the Secretary of the Interior authority to remove restrictions upon alienation as to either homestead or surplus in whole or in part under such rules and regulations concerning terms of sale and disposal of the proceeds thereof as he may prescribe in keeping with the provisions of the act.

It has been held, however, in view of the specific declaration found in said act that "nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act," that said provision would not operate to impose restrictions upon the alienation of the surplus lands of a Creek Indian of three-fourths Indian blood; that notwithstanding the surplus lands came within the language of the act, they were exempted therefrom because free from restrictions on alienation at the time, and because of the declaration that the Act of May 27, 1908, should not be construed to impose restrictions theretofore removed.⁴

Under the Choctaw-Chickasaw Supplemental Agreement, surplus lands were alienable by the allottee, after issuance of patent, as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years, in each case from date of patent.

Under the construction given the Act of May 27, 1908, in the Bartlett Case, restrictions were not reimposed as to that part of the surplus allotment which had become alienable under the Supplemental Agreement, but were perhaps

⁴ *Bartlett v. United States* (C. C. A.) 203 Fed. 410.

extended for the period mentioned as to that part of the surplus allotment which had not become alienable under said agreement.

§ 113. Alienation by heirs of less than half blood.—The statute in unequivocal language removes all restrictions upon alienation of allotted lands by heirs of allottees of less than half blood without condition, limitation, or qualification.

It is not believed that the provision making section 1 of the act effective sixty days from date thereof was carried forward to section 9.

In other words, the provisions of the act other than those found in section 1 became effective immediately upon the approval of the act. Under the terms thereof enrolled members of less than half Indian blood were free to alienate inherited lands without restriction.

This did not change the rule declared in section 22 of the Act of April 26, 1906, so far as adults were concerned, but did as to minors who, under the terms of said act, held their lands subject to restrictions upon alienation and were authorized to convey jointly with the adult heir only.⁵

§ 114. Alienation of homestead inherited from an allottee of one-half or more Indian blood leaving issue born subsequent to March 4, 1906.—Under the proviso to section 9 the homestead of the allottee of one-half or more Indian blood, where issue is left surviving born since March 4, 1906, is not devisable and is made inalienable during the life of such issue, but not longer than until April 26, 1931.

The period of inalienability is the lifetime of the issue surviving born subsequent to March 4, 1906. Upon the death of such issue, or the expiration of the time limit, such homestead becomes immediately alienable. If no such issue survives the lands are devisable, and if not disposed of by will descend free from all restrictions on alienation. This is an enlargement of the rule found in the Creek Agreement,

⁵ But see sections 115 and 116.

retaining the homestead of the Creek allottee for the use and support of children born after May 25, 1901, and is a limitation upon the right of alienation and devise found in sections 22 and 23 of the Act of April 26, 1906, wherever the heir is of less than the full blood.

§ 115. **Alienation of inherited lands by full bloods.**—That part of section 9 of the Act of May 27, 1908, prescribing a procedure for making effective conveyances by full blood Indian heirs, is as follows: "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, that no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee."

To the mind bent on ascertaining the meaning of the law, and having no purpose to subserve other than its correct interpretation, there seems little room for controversy as to what Congress intended by the above provision. It intended to make conveyances by full-blood heirs, regardless of the date of the death of the ancestor, subject to approval by the county courts of the county and state within the territorial jurisdiction in which the ancestor resided prior to his death.⁶

This was the accepted and unquestioned interpretation of the act for more than a year after its passage. Something like a year after its passage it was suggested that the use of the word "shall" gave the act prospective effect only, and took out of the conveyances, the approval of which were committed to the county court, all of those where the ancestor died prior to May 27, 1908.

The provision above quoted is a remedial one, and should be given, if necessary, retrospective as well as prospective operation.

⁶ *MaHarry v. Eatman*, 29 Okl. 46, 116 Pac. 935; *Harris v. Gale* (C. C.) 188 Fed. 112; *United States v. Knight* (C. C. A.) 206 Fed. 145.

It would be as sound interpretation to say that an act relating to administration did not authorize the administration of estates where the ancestor died prior to the act, or that an act for the registration of conveyances did not apply to conveyances made before the passage of the act, or that an act authorizing the appointment of guardians for minors did not apply to persons who were minors before the passage of the act, as to hold that the authority of the county court to approve conveyances is limited to those where the ancestor died prior to the act.

Clearly it is the death that changes the status of the lands of an allottee. The statute provides that the fact of death "shall" that is, from the time the act becomes effective—"operate" to remove all restrictions. "Shall" applies to the word "operate," and converts it, and not "death," into the future tense.

Suppose Congress had anticipated that it would be contended that the language used might be interpreted as applying only to deaths occurring subsequent to the act, and had sought to prevent the possibility of such an interpretation? It would perhaps have used the following language: "The death of any allottee of the Five Civilized Tribes heretofore or hereafter occurring shall operate to remove all restrictions upon the alienation of said allottee's lands." The use of the future tense of the word "operate," therefore, has no significance in determining what Congress meant by the word "death," because whatever it meant, or was intended to include, it was the natural and proper thing to say "shall operate."

To give the statute this interpretation does not make it retrospective. It simply provides what the procedure for making effective full-blood conveyances shall be after the effective date of the act, whether death occurred before or after the act.

On August 19, 1909, the Attorney General of the United States interpreted the act as conferring authority upon the

county courts to approve full-blood conveyances only in those cases where death occurred subsequent to the passage of the act.⁷ The reasoning adopted by the Attorney General is not persuasive, and most of the cases he cites relate to forfeitures, and the declaration therein relied upon is that a statute shall not have retroactive effect where it operates to accomplish a forfeiture.

The Supreme Court of the state of Oklahoma and the District Court for the Eastern District of Oklahoma and the Circuit Court of Appeals for the Eighth Circuit have each held that it is the death of the allottee that under the act thereafter operates to remove restrictions, and that the county court has authority to approve such conveyances regardless of the date of the death of the ancestor, and that the Secretary had no jurisdiction to approve subsequent to the Act of May 27, 1908, regardless of the date of the death of the ancestor.⁸

Subsequent to the promulgation of the opinion by the Attorney General of the United States in August, 1909, in a supplemental brief filed on behalf of his office for the United States in the cases of *Brown and Gritts v. United States*⁹ and *Muskrat and Dick v. United States*,¹⁰ he interpreted the act as it is here interpreted; the language of the brief being as follows: "The Act of May 27, 1908, is set forth in full in the principal brief on behalf of the Government. (See brief for the United States in *William Brown and Levi B. Gritts v. United States*, No. 331, October Term, 1910, pages 15, 16, 17, and 18.) It provides: 'That from and after sixty days from the date of this act that status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows:' Then follow various restrictions, the pertinent ones being in substance that full-

⁷ 27 Ops. Attys. Gen. 530.

⁸ *MaHarry v. Eatman*, 29 Okl. 46, 116 Pac. 935.

⁹ 219 U. S. 346, 31 Sup. Ct. 250, 55 L. Ed. 246.

¹⁰ 219 U. S. 346, 31 Sup. Ct. 250, 55 L. Ed. 246.

blood Cherokee Indians (to which class Brown and Gritts belong) shall not alienate any lands, whether homesteads or surplus lands (heretofore or hereafter allotted to them) until on or after April 26, 1931, except with the approval of the Secretary of the Interior, nor alienate any lands inherited by them, except with the approval of a court having jurisdiction of the settlement of the estate of the deceased allottee. There are also provisions with respect to the leasing of lands, and then followed other matters not now pertinent. The scope and purpose of the Act of May 27, 1908, are clearly to fix the present status of all lands heretofore or hereafter allotted to members of the Five Civilized Tribes, including the lands of appellants, with respect to every and any manner of alienation or incumbrance, and to modify or repeal any and all previous acts inconsistent with the new declaration of Congress."

In the original brief in the same above causes on behalf of the United States, through the Attorney General's office, the following interpretation was given to said act: "The second reason why this case is moot is shown by the fact that Congress itself, after the passage of the act authorizing this suit and after this suit was begun—that is, to say on May 27, 1908 (35 Stat. 312, 315, c. 199), passed another act providing that no allotted lands of full-blood Cherokee Indians shall be alienated or incumbered prior to April 26, 1931, and that no inherited lands of such Indians shall be alienated, except with the approval of a court having jurisdiction of the estate of the allottee."

In the brief of the United States on reargument of the cause of *Tiger v. Western Investment Company*¹¹ the interpretation given by the Attorney General, through his special assistant, to the Act of May 27, 1908, after quoting the provisions of the section each relating to alienation by full-blood heirs, is as follows: "It clearly appears from this last legislative expression on the subject that Congress re-

¹¹ 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

garded full-blood Indian heirs as still under restraint respecting the alienation of their land, and intended merely to substitute the appropriate court in Oklahoma (which state in the meantime had been admitted to the Union) for the Secretary of the Interior as the authority to protect such heirs in all future conveyances."

The Supreme Court of the United States in the *Tiger Case*,¹² after quoting the provision of the Act of May 27, 1908, under consideration, uses the following language in reference thereto:¹³ "The obvious purpose of these provisions is to continue supervision over the right of full-blood Indians to dispose of lands by will, and to require conveyances of interests of full-blood Indians in inherited lands to be approved by a competent court."

§ 116. **Court having jurisdiction of settlement of estate of deceased allottee.**—The statute requires conveyances of full-blood Indian heirs to be approved by the court having jurisdiction of the settlement of the estate of the deceased allottee.

Under this statute is the actual pendency of an administration proceeding in the county of the residence of the ancestor at the time of his death necessary to confer jurisdiction to approve a conveyance by a full-blood heir of his interest in allotted Indian lands? The purpose sought to be accomplished is an economical and efficient protection

¹² 221 U. S. 309, 31 Sup. Ct. 583, 55 L. Ed. 738.

¹³ It is to be regretted that the Supreme Court of the United States has not had occasion to pass upon and finally adjudicate whether the Secretary of the Interior or the court has jurisdiction to approve conveyances made subsequent to May 27, 1908, where the ancestor died prior to that date. The logic of the Supreme Court of the State and of the United States District Court for the Eastern District of Oklahoma, that such jurisdiction is in the county courts and not of the Secretary of the Interior, seems unanswerable. The interpretation of the statute, however, cannot be regarded as finally settled until passed upon by the Supreme Court of the United States, although the language used by that court in the *Tiger Case* strongly indicates that it will hold with the Supreme Court of the state and the Circuit Court of Appeals for the Eighth Circuit.

of the full-blood heir against an improvident conveyance. The pendency of an administration proceeding would not add as to either economy or protection.

The procedure on approval would be identical, whether in a court in which an administration proceeding was pending or in a court having jurisdiction of the settlement of an estate, but in which no administration proceeding was actually pending.

There is no occasion for an administration upon the estates of a majority of the allottees of the Five Civilized Tribes. Few had debts, and fewer still property subject to the payment of debts.

An administration proceeding could be instituted and maintained only by incurring substantial expense. To say that Congress intended that the heir should incur such expenses as a condition precedent to being permitted to apply to the county court for its approval of a conveyance of his inherited land is to say that Congress required him to do an expensive, unnecessary and ineffective act. No doubt this condition is responsible for the use by Congress of the language "court having jurisdiction of the settlement of the estate" in lieu of "the court exercising jurisdiction over the estate of the deceased allottee."

On May 27, 1908, the following pertinent constitutional and statutory provisions relating to the subject-matter were in force in Oklahoma:

Article 7, § 12, Oklahoma Constitution: ¹⁴ "The county court coextensive with the county shall have original jurisdiction in all probate matters. * * *

Article 7, § 13, Oklahoma Constitution: ¹⁵ "The county court shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration, set-

¹⁴ Williams' Const. and Enabling Act of Okl. Ann. § 197.

¹⁵ Williams' Const. and Enabling Act of Okl. Ann. § 198.

the accounts of executors, administrators, and guardians; transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the sale, settlement, partition, and distribution of the estates thereof, The county court shall be held at the county seat, but the Legislature may provide for holding sessions of the county court at not more than two additional places in the county: Provided, That alternate sessions of county court in Le Flore county shall be held at Talihina."

Article 7, §§ 12 and 13, of the Oklahoma Constitution, are vitalized by the extension of the territorial probate code over the state. This code provides, among other things: "The county court *has probate jurisdiction* and the judge thereof power which must be exercised in the cases and in the manner prescribed by statute."¹⁶

One of the matters over which the county court has jurisdiction is the administration of the estates of deceased persons dying within the county and not domiciled elsewhere.

This was the character of jurisdiction referred to in the Constitution and the statutes that was designated in the Act of May 27, 1908; that is, the county court, which under the Constitution and laws of the state, *has jurisdiction* to administer the estate of a deceased allottee.

Congress had the choice of terms in describing the requirements of the tribunal designated to approve such conveyances. Its members knew that the term "having jurisdiction" is ordinarily construed to mean the court authorized to exercise jurisdiction or having jurisdiction of the subject-matter involved, and that the term used in describing the actual exercise of the jurisdiction in the administration of the estate is the court administering upon the estate of a deceased person or a court in which administration proceedings are pending.

¹⁶ Rev. Laws 1910, § 6189.

The conclusion seems inevitable that, if Congress had intended the pendency of administration proceedings as a condition precedent to the approval of a full-blood conveyance by a county court, it would have used language clearly and definitely requiring the pendency of such administration, rather than that descriptive of the general jurisdiction and authority of the court.¹⁷

¹⁷ *Mullen v. Short*, 133 Pac. 230.

CHAPTER 16

RESTRICTIONS ON ALIENATION OF INDIAN LANDS ALLOTTED UNDER THE GENERAL ALLOTMENT ACT AND AMENDMENTS THERETO AND SUBSEQUENT LEGISLATION AFFECTING THE SAME

- § 117. Alienation—Restrictions on under General Allotment Act.
118. Alienation—As affected by Amendment to General Allotment Act of February 28, 1891.
119. Alienation—Removal of restrictions on under Act of May 27, 1902.
120. Alienation—Right of as affected by Act of June 19, 1902.
121. Alienation—Restrictions on as affected by amendment to General Allotment Act of May 8, 1906.
122. Alienation—Right of as affected by amendment of June 21, 1906.
123. Alienation—Involuntary—As affected by the Act of June 21, 1906.

§ 117. Alienation—Restrictions on Under General Allotment Act.—Section 5 of the General Allotment Act provides that any conveyance made of lands allotted thereunder, or any contract made touching the same, before the expiration of the trust period, shall be absolutely null and void. The language of the act is clear and explicit. It is a restriction on alienation or incumbrance or contracting with reference to the allotted land for the period of time mentioned in the statute, to wit, 25 years. No right can be acquired in or to the lands covered by such trust patent during the trust period, nor contracts be sustained evasive of the language of the act, or accomplishing indirectly what cannot be accomplished by direct conveyance, incumbrance, or contract. A contract in violation of this provision cannot be the basis of a cause of action or ground of defense, and no estoppel of any character can arise thereon.¹ It is the purpose of the act to maintain the lands allotted for the

¹ United States v. Rickert, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532; Tiger v. Western Inv. Co., 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; Goodrum v. Buffalo, 162 Fed. 817, 89 C. C. A. 525; Beck v. Flournoy Live Stock & Real Estate Co., 65 Fed. 30, 12 C. C. A. 497; United States v. Flournoy Live Stock & Real Es-

use and benefit of the allottee, or his heirs, free of any incumbrance, charge, or obligation of any character whatsoever incurred during the trust period. A removal of all restrictions on alienation at any time before the expiration of the trust period would effectually destroy the restriction imposed in this provision and authorize alienation by the allottee notwithstanding the title is held in trust by the United States. The guaranty of the United States that it will, at the expiration of the trust period, convey the fee discharged of the trust and free of all charges and incumbrances is consistent with the language used in directly imposing restrictions upon alienation, and both provisions are capable of harmonious operation. It is not the quantum of estate taken by the allottee under the trust patent that prevents alienation, but the direct prohibition against the same and the obligation of the United States to deliver the title and possession of the land at the end of the trust period, free from incumbrance of any character whatsoever.

Under section 4 of the General Allotment Act provision is made for making allotments to Indians out of public lands of the United States. Such allotted lands are, however, taken and held subject to all the restrictions upon alienation imposed in said act as to allotted tribal lands.

§ 118. Alienation—As affected by amendment to General Allotment Act of February 28, 1891.—The amendment to the General Allotment Act of February 28, 1891, does not deal directly with restrictions upon alienation of allotted lands. It enlarges the authority of the President of the United States to direct the allotting of Indian lands, authorizes the making of leases, and prescribes what shall

tate Co. (C. C.) 69 Fed. 886; *United States v. Allen*, 179 Fed. 15, 103 C. C. A. 1; *United States v. Thurston County*, 143 Fed. 287, 74 C. C. A. 425; *United States v. Flournoy Live Stock & Real Estate Co.* (C. C.) 71 Fed. 576; *Williams v. Steinmetz*, 16 Okl. 104, 82 Pac. 986; *Light v. Conover*, 10 Okl. 782, 63 Pac. 966; *Reeves & Co. v. Sheets*, 16 Okl. 342, 82 Pac. 487.

constitute marriage for the purpose of determining descent. These phases of the act are discussed under the proper titles. It also, perhaps, enlarges the provision permitting the selection of public lands in allotment by members of Indian tribes. The title of such public lands, when selected, however, is to be held subject to all of the provisions and limitations of the General Allotment Act.

§ 119. Alienation—Removal of restrictions on under Act of May 27, 1902.—There is contained in the Indian Appropriation Bill, approved May 27, 1902, a provision permitting the adult heirs of a deceased Indian, to whom a trust or other patent containing restrictions upon alienation has been issued, to sell the lands allotted to the deceased ancestor, subject to the approval of the Secretary of the Interior. Under this provision the act of the Secretary of the Interior in approving a sale is in effect a removal of restrictions.² The question of whether or not the Secretary shall approve such sale is left entirely in his discretion.

Inherited lands of a minor may be alienated, when sale is made through the proper probate court and approved by the Secretary of the Interior. However, the homestead in each instance is reserved from sale during the lifetime of the father and mother or the minority of any child or children. And it is therefore only in case where the allottee does not leave surviving a father, mother, or child that the sale of the homestead may be made; or, if such allottee has left surviving either one or all of the classes mentioned, the homestead may be alienated upon the death of all such persons. Neither the approval of the sale of the minor's inherited interest in lands by the court, nor such approval by the Secretary of conveyances by adult heirs, or sales

² *United States v. Thurston County, Neb.*, 143 Fed. 287, 74 C. C. A. 425; *National Bank of Commerce v. Anderson*, 147 Fed. 87, 77 C. C. A. 259; *United States v. Leslie* (C. C.) 167 Fed. 670; *United States v. Bellm* (C. C.) 182 Fed. 161; *United States v. Comet Oil & Gas Co.* (C. C.) 187 Fed. 674; *United States v. Park Land Co.* (C. C.) 188 Fed. 383.

by the guardian for the minor heirs, determines the heirship of inherited lands, nor that there was not left surviving a father, mother, or child. It is presumed, of course, that neither the court would order a sale nor the Secretary approve it, so far as the homestead is concerned, if there was left surviving father, mother, or minor child. But no provision is made for determining whether or not there was left surviving such persons in either the proceedings for the sale of the land or in the approval by the Secretary. It therefore becomes necessary, in determining the validity of a conveyance of inherited Indian lands, to make an investigation independent of the proceedings in the probate court and of the approval by the Secretary of the Interior, to determine whether or not such deceased allottee left surviving him father, mother, or minor child, where title to the homestead is involved. And as to either the homestead or lands in excess of the homestead it is necessary to determine whether or not all of the heirs have joined in the conveyance.

By the Act of May 29, 1908, however, the Secretary's determination of heirship is made conclusive as to allotted Indian lands other than those in Oklahoma, Minnesota and South Dakota.³

And by the Act of June 25, 1910, the Secretary's determination of heirship is made conclusive as to inherited allotted lands in all other states than Oklahoma.⁴

By the Act of February 14, 1913 (37 Stat. 678, c. 55), amending section 2 of the Act of June 25, 1910, conclusive jurisdiction is conferred upon the Secretary of the Interior to determine the heirship of all allotted Indian lands while the title continues to be held in trust. By a proviso allottees of the Five Civilized Tribes and of the Osages are excluded from the jurisdiction thus conferred upon the Secretary of the Interior.⁵

³ Chapter 216, 35 Stat. 444.

⁵ See section 948a.

⁴ See chapter 61.

§ 120. Alienation—Right of as affected by Act of June 19, 1902.—The Joint Resolution of June 19, 1902 (32 Stat. 744), requires, where not otherwise specifically provided, that all allotments in severalty to Indians outside of the Indian Territory be made in conformity to the provisions of the General Allotment Act and other general acts amendatory thereof and supplemental thereto. It is further provided that the land so allotted shall be subject to all the restrictions and carry all the privileges incident to allotments made under said act and other general acts amendatory thereof or supplemental thereto. This statute furnishes a rule for determining the right of alienation of allotted Indian lands upon the basis of the General Allotment Act, the amendments thereof and legislation supplemental thereto, in all cases where specific provision is not made for the application of a different rule. It furnishes a guide in those cases where the language used is uncertain and indefinite and fails to supply a fixed standard.

§ 121. Alienation—Restrictions on as affected by amendment to General Allotment Act of May 8, 1906.—On May 8, 1906, the President approved an act amending section 6 of the General Allotment Act by substitution. The chief purpose of this amendment is to retain control by the United States of trust allotments during the trust period, notwithstanding the allottee may have become a citizen of the United States.

Section 6 as amended provides that at the expiration of the trust period, and when the allotted lands have been conveyed in fee, the allottee shall have the benefits of and be subject to the laws, both civil and criminal, of the state or territory in which he resides. Under section 6 as it originally stood the allottee became a citizen of the United States and of the state, and subject to the laws thereof, civil and criminal, upon the issuance of the trust patent.

The amendment further provides that in case of the death of an allottee before the expiration of the trust period,

or the issuance of a final patent, the allotment may be canceled, the land revert to the United States, and the Secretary ascertain the legal heirs and cause to be issued to such heirs a patent in fee simple for the allotted land. The Secretary may, however, if he prefers, sell the land and distribute the proceeds to the heirs of the deceased allottee. It is probable that this act, in so far as it relates to citizenship, the application of the laws of the state, and cancellation of allotments, is prospective only. It is not probable that Congress intended to take away citizenship rights that had vested or property rights that had become fixed under previous acts. Under this act the Secretary of the Interior is authorized, when satisfied that any Indian allottee is competent and capable of managing his or her affairs and at any time, to cause to be issued to said allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation, of said land shall be removed, but such lands shall not be liable to the satisfaction of any debt contracted prior to the issuance of patent. By this paragraph a final patent may issue prior to the expiration of the trust period, and when issued is given substantially the same effect as though issued, under the General Allotment Act, after the expiration of the trust period.

§ 122. **Alienation—Right of as affected by amendment of June 21, 1906.**—Under the Act of June 21, 1906, the President of the United States is authorized, at any time before the expiration of the trust period of any Indian allottee to whom a trust patent has been or shall be issued containing restrictions on alienation, to continue such restrictions for such period as he may deem best.⁶ Allotted lands in what was formerly the Indian Territory are specifically excluded from this provision. It applies, however, to all other allotted lands.

§ 123. **Alienation—Involuntary—As affected by the Act of June 21, 1906.**—By the Act of June 21, 1906, the General

⁶ Hemmer v. United States (C. C. A.) 204 Fed. 898.

Allotment Act of February 8, 1887, was so amended as to provide that no land acquired under the provisions of said act should in any event become liable to the satisfaction of any debt contracted prior to the issuance of the final patent in fee therefor. It was further provided that no money accruing under any lease or sale of lands held in trust by the United States for any Indian should become liable for the payment of any debt or claim of such Indian, contracted or arising during the trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior. This is a comprehensive provision, intended to afford full protection to allottees to whom lands are allotted under the General Allotment Act of 1887, and the amendments thereto, against having their allotted lands incumbered or sold on account of any debt contracted prior to the issuance of final patent.

CHAPTER 17

ALIENATION OF LANDS IN OKLAHOMA OF ALLOTTEES OF
OTHER THAN THE FIVE CIVILIZED TRIBES.

- § 124. Alienation—Restrictions on—Absentee Shawnee and Citizen Pottawatomie.
125. Alienation—Subsequent legislation affecting the allottees of the Absentee Shawnee and Citizen Pottawatomie Tribes.
126. Alienation of inherited land of Absentee Shawnee and Citizen Pottawatomie authorized.
127. Cheyennes and Arapahoes—Restrictions on alienation.
128. Restrictions on alienation of the allotted lands of the Iowa.
129. Restrictions on alienation—Kansas or Kaw.
130. Conveyance of inherited lands—Kansas or Kaw.
131. Restrictions on alienation—Kickapoo.
132. Removal of restrictions on alienation by allottees of the Kickapoo Tribe.
133. Alienation—Allotments of Kiowa, Comanche and Apache.
134. Alienation—Modoc.
135. Alienation—Allotments of Modoc.
136. Alienation—Restrictions on under Osage Allotment Agreement—Homestead.
137. Alienation—Restrictions on under Osage Allotment Agreement—Surplus.
138. Sale by the Secretary of Osage Surplus Lands under Act of March 3, 1909.
139. Alienation—Restrictions on by Otoe, Ottawa, Ponca, Shawnee, Seneca and Wyandotte.
140. Alienation—Restrictions on by Ottawa, Shawnee, Seneca and Wyandotte, as affected by Act of March 3, 1909.
141. Alienation—Restrictions on—Pawnee.
142. Restrictions on alienation—Peoria, Kaskaskia, Plankeshaw, Wea and Western Miami.
143. Confederated Peoria—Alienation of lands of allottees in excess of one hundred acres authorized by the act of June 7, 1897.
144. Alienation—Restrictions on surplus lands—By Peoria, Kaskaskia, Plankeshaw, Wea and Western Miami—Removed.
145. Alienation—Secretary authorized to remove restrictions on—Of Peoria, Kaskaskia, Plankeshaw, Wea and Western Miami.
146. Alienation—Restrictions on—Quapaw.
147. Restrictions on alienation—Sac and Fox.
148. Alienation—Restrictions on by Wichita and affiliated bands.

§ 124. Alienation—Restrictions on—Absentee Shawnee and Citizen Pottawatomie.—Allotments to members of the Absentee Shawnee and Citizen Pottawatomie Tribes were

made under an allotment agreement dated June 25, 1890, and approved by Act of Congress of March 3, 1891. Prior to the ratification of the allotment agreement, allotments had been made to certain members of these tribes by authority of the President of the United States under the General Allotment Act of 1887. By the terms of the agreement such allotments were confirmed.

Under said allotment agreement the title of allottees is evidenced and protected in the same manner and to the same extent provided for in the General Allotment Act. The apparent result of this agreement is to apply all the provisions of the General Allotment Act, amendments thereof and legislation supplemental thereto to the allottees of these two tribes and to their allotted and inherited allotted lands.

§ 125. Alienation—Subsequent legislation affecting the allottees of the Absentee Shawnee and Citizen Pottawatomie Tribes.—There is included in the Indian Appropriation Bill, approved August 15, 1894,¹ the following provision: "That any member of the Citizen Band of Pottawatomie Indians and of the Absentee Shawnee Indians of Oklahoma, to whom a trust patent has been issued under the provisions of the Act approved February eight, eighteen hundred and eighty-seven (24 Stat. 388), and being over twenty-one years of age, may sell and convey any portion of the land covered by such patent in excess of eighty acres, the deed of conveyance to be subject to approval by the Secretary of the Interior under such rules and regulations as he may prescribe, and that any Citizen Pottawatomie not residing upon his allotment, but being a legal resident of another state or territory, may in like manner sell and convey all the land covered by said patent, and that upon the approval of such deed by the Secretary of the Interior the title to the land thereby conveyed shall vest in the grantee therein named. And the land sold and conveyed under the

¹ See section 960.

provisions of this act shall, upon proper recording of the deeds therefor, be subject to taxation as other lands in said territory, but neither the lands covered by such patents not sold and conveyed under the provisions of this act, nor any improvements made thereon, shall be subject to taxation in any manner by the territorial or local authorities during the period in which said lands shall be held in trust by the United States."

The effect of this act is to permit the sale by the allottee, with the approval of the Secretary of the Interior, of all of his allotted land in excess of eighty acres. Nonresident Citizen Pottawatomies—that is to say, Citizen Pottawatomies legally residing in another state or territory—are permitted, with the approval of the Secretary of the Interior, to convey all of their allotments. All lands sold and conveyed under the provisions of this act, upon the recording of the deeds therefor, become subject to taxation as other lands. All allotted lands and the improvements thereon are exempted from taxation while held in trust by the United States.

§ 126. **Alienation of inherited land of Absentee Shawnee and Citizen Pottawatomie authorized.**—Section 7 of the Act of May 31, 1900,² contains a provision permitting alienation of the inherited lands of allottees of the two tribes in the following language: "That the proviso to the act approved August fifteenth, eighteen hundred and ninety-four, permitting the sale of allotted lands by members of the Citizen Band of the Pottawatomie Indians and of the Absentee Shawnee Indians of Oklahoma is hereby extended so as to permit the adult heirs of a deceased allottee to sell and convey the lands inherited from such decedent; and if there be both adult and minor owners of such inherited lands, then such minors may join in a sale thereof by a guardian, duly appointed by the proper court, upon an order of such court made upon petition filed by such guard-

² See section 961.

ian, all conveyances made under this provision to be subject to the approval of the Secretary of the Interior; and any Citizen Pottawatomie or Absentee Shawnee not residing upon his allotment, but being an actual resident of another state or territory, may in like manner sell and convey all the land allotted to him."

Under the above provision adult heirs of a deceased allottee are permitted, with the approval of the Secretary of the Interior, to sell and convey all lands received by inheritance. Where there are both adult and minor heirs, the minors are permitted to join in the sale thereof, by their guardian, upon an order of the probate court, made on petition of the guardian, such sale, however, to be subject to the approval of the Secretary of the Interior. It will be observed that there may be some possible question as to the authority to convey inherited lands where all the heirs are minors. Two conditions are specifically provided for: (1) Authorization of conveyances by full-blood heirs who are adults; and (2) conveyances where part of the heirs are adults and part are minors. The Supreme Court of the state of Oklahoma has fully construed a similar statute authorizing the joint conveyance by adult and minor heirs of allottees of the Five Civilized Tribes of inherited lands.³ The proper court to make the order authorizing the guardian to join in the sale with the adult heir is the probate court⁴ of the county of the residence of the minor. Citizen Pottawatomie and Absentee Shawnee not residing upon their allotments, and being actual residents of another state or territory, are authorized to sell and convey their allotted lands upon the approval of the Secretary of the Interior.

§ 127. Cheyennes and Arapahoes—Restrictions on alienation.—Under the Cheyenne and Arapahoe Allotment Agreement, after the selection and approval of allotments, title thereto is held for the period of twenty-five years in

³ *Wilson v. Morton*, 29 Okl. 745, 119 Pac. 213.

⁴ *Perkins v. Clissell*, 32 Okl. 827, 124 Pac. 7.

the manner and to the extent provided in the General Allotment Act and conveyed in fee simple to the allottee or his heirs free from all incumbrances at the expiration of the trust period. This makes all of the terms and provisions of the General Allotment Act applicable, as well as the amendments thereto and subsequent legislation affecting the right of alienation of lands allotted under said act. There is no legislation with special reference to the Cheyennes and Arapahoes. For a full consideration of the law applicable to Cheyennes and Arapahoes reference is made to the discussion of the General Allotment Act and amendments thereto.⁵

§ 128. Restrictions on alienation of the allotted lands of the Iowas.—Under the Iowa Allotment Agreement, patents are to be issued by the Secretary of the Interior in the name of the allottee, but to be of legal effect and declare that the United States will hold the land thus allotted for twenty-five years in trust for the sole use and benefit of the allottee, or, in case of his death, of his heirs or devisees, according to the laws of the state or territory where the land is located, and at the expiration of the trust period will convey the same to the Indian, his heirs or devisees, in fee, discharged from the trust and free from all incumbrances.

All conveyances of allotted lands during the trust period are prohibited, as well as the making of any contracts touching the same, and such contracts or conveyances, if made, are declared to be absolutely null and void. Such lands are not subject to seizure upon execution or other final process issued out of any court of any state or territory, and never to be seized upon process issued upon any judgment for a debt or liability incurred, the consideration of which, immediate or remote, passed prior to the expiration of the trust period. The restrictions upon alienation contained in this act are somewhat broader, so far as the terms of the act are concerned, than those contained

⁵ See chapter 64.

in the General Allotment Act. There seems to be tacit recognition of the right to dispose of allotted land by will, in that the trust patent is to provide that, in case of the death of the allottee prior to the expiration of the trust period, conveyance is to be made to the heirs or devisees, according to the law of the state or territory where such land is located. It was further provided by a supplemental agreement that the President might continue the trust period for not exceeding five years beyond the time provided in the agreement.

§ 129. **Restrictions on alienation—Kansas or Kaw.**—Allotments were made to persons whose names appear upon the Kansas or Kaw roll at the Osage Indian agency as it existed December 1, 1901, with descendants born to such Indian members prior to December 1, 1902. Homestead allotments of 160 acres were made to each member of the tribe, and are declared to be inalienable and nontaxable for twenty-five years from the 1st day of January, 1903, except as otherwise provided in said act. After the selection of a homestead for each member of the tribe, the residue of the lands are required to be divided equally in acreage among the members of the tribe. Lands other than the homestead are made free from taxation as long as the title remains in the allottee, but in no event to exceed twenty-five years. Such lands can not be sold or incumbered in any way before the expiration of ten years from the date of the deed to said member, except as provided in the act, and with the approval of the Secretary of the Interior. Lands of minors are made inalienable during minority. The authority of the Secretary of the Interior to approve the conveyance of the lands of a Kansas or Kaw allottee in excess of his homestead is not very clear or definite; the provision being, "Except as herein provided and with the approval of the Secretary of the Interior, and it shall be his duty to carefully investigate each sale or transaction before he approves the same," which impliedly at least authorizes con-

veyance of lands other than the homestead by Kansas or Kaw allottees upon the approval of the Secretary.

Deeds to allotments are required to be executed by the Head Chief and approved by the Secretary of the Interior; a separate deed being given for the homestead.

The approval by the Secretary of the Interior operates as a relinquishment to the individual member of the tribe of the right of the United States and the tribe in and to the lands described in the deed. Deeds are required to be recorded in the office of the register of deeds in the county to which the reservation is attached.

§ 130. **Conveyance of inherited lands—Kansas or Kaw.**—Under section 11 of the agreement the adult heirs of any deceased member of the tribe whose selection has been made or to whom a deed or patent has been issued may sell and convey the lands inherited from such decedent, with the approval of the Secretary of the Interior. If there be both adult and minor heirs, then such minor heirs may join in the sale thereof, by guardian duly appointed by the probate court of the county in which the minor resides, upon the order of such court made upon petition filed by the guardian; such conveyance also to be subject to the approval of the Secretary of the Interior. Apparently where all heirs are minors the conveyance of inherited lands is not authorized.

§ 131. **Restrictions on alienation—Kickapoo.**—Under the Kickapoo Allotment Agreement, title of Kickapoo allottees is taken and held by the United States in trust for the benefit of the allottees in accordance with the provisions of the General Allotment Act and subject to all of its conditions and limitations, to be conveyed at the end of the trust period in fee simple to the allottee, or his heirs, as provided in said act. The General Allotment Act and amendments thereto are fully discussed elsewhere.[•]

[•] See chapter 68.

§ 132. Removal of restrictions on alienation by allottees of the Kickapoo Tribe.—The Indian Appropriation Bill, approved June 21, 1906,⁷ contains a provision removing restrictions upon alienation by allottees of the Kickapoo, Cheyenne, Delaware, Caddo, and Wichita Indians, in the following language: "All restrictions as to sale and incumbrance of all lands, inherited, and otherwise, of all adult Kickapoo Indians, and of all Shawnee, Delaware, Caddo, and Wichita Indians, who have heretofore been, or who are now known as Indians of said tribes, affiliating with said Kickapoo Indians, now or hereafter non-resident in the United States who have been allotted lands in Oklahoma or Indian Territory, are hereby removed: Provided, that any such Indian allottee who is a nonresident of the United States may lease his allotment without restrictions for a period of not exceeding five years: Provided further, that the parent or the person next of kin, having the care and custody of a minor allottee, may lease the allotment of said minor as herein provided, except that no lease shall extend beyond the minority of said allottee."

Are restrictions removed by the terms of this act only upon inherited lands or as to both inherited and allotted lands? The language is: "All restrictions as to sale and incumbrance of all lands, inherited, and otherwise. * * *" The phraseology of this legislation is peculiar. The words "inherited" and "and otherwise" are separated from "lands" by a comma. The words "inherited" and "and otherwise" are evidently words of description and not words of limitation. It was intended to remove restrictions from all lands, inherited and otherwise, held by members of the tribe. What is the effect of the act that "all restrictions as to sale and incumbrance of all lands, inherited, and otherwise, * * * are hereby removed"? Trust patents had been issued to the allottees and the trust period had not expired. Was it the purpose of Congress to authorize the immediate

⁷ 34 Stat. 363, c. 3504.

alienation by allottees of the Kickapoo Tribe who were nonresident of the United States? It has been seriously contended by counsel for the government of the United States, and at one time held, that this provision did not authorize alienation prior to the issuance of patent, that restrictions upon alienation can exist only when there is title to convey, and that, the Kickapoo allottee not having title, restrictions upon alienation, in the ordinary sense of the term, could not exist.

Would not the logical result of this contention be that the government could not impose restrictions upon alienation without at the same time conveying title to the allottee? Recent decisions of the Supreme Court of the United States, holding that the removal of all restrictions authorizes a conveyance before issuance of patent, would seem to be applicable to the language of this act.⁸

§ 133. **Alienation—Allotments of Kiowa, Comanche and Apache.**—Trust allotments were made to the members of the Kiowa, Comanche and Apache tribes under an allotment agreement; the title to be held in the manner and for the period and under the conditions provided in the General Allotment Act and conveyed at the end of the trust period to the allottee, or his heirs, free from all incumbrances.⁹ This subjects the Kiowa, Comanche and Apache allotments to all of the terms of the General Allotment Act, amendments thereto and subsequent legislation affecting lands allotted thereunder.

§ 134. **Alienation—Modoc.**—The Modocs received their allotments under the General Allotment Act, and except as modified by the Act of March 3, 1909,¹⁰ the right of Modoc allottees to alienate their allotments is controlled by

⁸ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847.

⁹ *Lone Wolf v. Hitchcock*, 187 U. S. 553, 23 Sup. Ct. 216, 47 L. Ed. 299; Act June 6, 1900, 31 Stat. 672-676, c. 813.

¹⁰ See chapter 75.

the General Allotment Act, amendments thereto and subsequent legislation.

§ 135. **Alienation—Allotments of Modoc.**—The Act of Congress of March 3, 1909,¹¹ authorizes the removal of such Modoc Indians as desire to be removed from the Quapaw Agency in the Indian Territory to the Klamath Agency in Oregon. Upon the removal of any of such Indians, and for the purposes thereof, the Secretary is authorized, upon application of any allottee, to sell, under such rules and regulations as he may prescribe, all lands, inherited and otherwise, theretofore allotted to such members of said tribe in Oklahoma, and to issue a patent in fee simple to the purchaser or purchasers of said land, and, upon his so doing, all restrictions as to the sale, incumbrance and taxation of said land shall thereupon be removed and cease. Modoc allottees preferring to remain in Oklahoma are permitted to lease their lands for a period of not to exceed five years, and the parent, or next of kin, having the custody and care of any minor, is authorized to lease the allotment of said minor for said period.

§ 136. **Alienation—Restrictions on under Osage Allotment Agreement—Homestead.**—The Osage Allotment Agreement (Act June 28, 1906, c. 3572, 34 Stat. 539) provides for three selections of one hundred and sixty acres each. After making the third selection, each member of the tribe is permitted to designate a homestead, and his certificate of allotment and deed shall so designate the same, and the lands so designated as a homestead shall be inalienable and nontaxable until otherwise provided by act of Congress. Further along in the agreement it is provided that the homestead shall remain inalienable for a period of twenty-five years, or during the life of the homestead allottee.

The District Court of the United States for the Eastern District of Oklahoma and the Circuit Court of Appeals for

¹¹ See sections 1114 and 1115.

the Eighth Circuit have each recently held, construing the entire Osage Allotment Agreement, that the homestead allotment of an Osage allottee descends subject to restrictions on alienation unless the Secretary of the Interior has, during the lifetime of such allottee, issued the certificate of competency authorized by said agreement.¹²

§ 137. **Alienation—Restrictions on under Osage Allotment Agreement—Surplus.**—The other two of the three selections, together with the share of allottee in the remaining lands allotted to him, are classed as surplus lands, and are made inalienable for twenty-five years from date of selection, except as subsequently provided in said agreement. It is subsequently, in section 7 of the agreement, provided that the Secretary of the Interior may, in his discretion, at the request and upon the petition of any adult member of the tribe, issue to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded to him by reason of said act, except his homestead, where, upon investigation, consideration and examination of the request, he shall find any such member fully competent and capable of transacting his or her own business and caring for his or her own individual affairs, and upon the issuance of such certificate such member, except as provided in said act, is to have the right to manage, control and dispose of his or her lands the same as any citizen of the United States. The only limitation contained in said act upon the authority of an allottee, to whom a certificate of competency has been issued, to alienate, is a proviso that nothing in the act shall operate to authorize a sale of the oil, gas, coal, or other minerals covered by said lands.* There is a recital that such minerals are reserved for the

¹² *United States v. Aaron* (C. C.) 183 Fed. 347; *Aaron v. United States* (C. C. A.) 204 Fed. 943; *United States v. Board of Com'rs of Osage County* (C. C.) 193 Fed. 485; *Hunter v. Hooper*, 132 Pac. 490; *Clawson v. Cottingham*, 34 Okl. 493, 125 Pac. 1114; *Neilson v. Alberty* (Okl.) 129 Pac. 847; *Levindale Lead & Zinc Mining Co. v. Coleman* (Okl.) decided June 10, 1913, and pending on rehearing.

* *Leahy v. Indian Territory Illuminating Oil Co.* (Okl.) 135 Pac. 416.

use of the tribe for a period of twenty-five years, and to become the property of the individual owner of the land at the expiration of said twenty-five years, unless otherwise provided by act of Congress. The surplus lands of the Osage allottee are, in the absence of the issuance of a certificate of competency, inalienable for twenty-five years from date of allotment, by either the allottee or his heirs, and alienable immediately, except as to the minerals thereunder, upon the issuance of a certificate of competency by the Secretary of the Interior as provided in said act.¹³

The certificate of competency issued to an Osage allottee merely authorizes voluntary disposition, except in so far as it may render the land subject to taxation. It does not operate to subject such lands to sale in judicial proceedings.¹⁴

§ 138. Sale by the Secretary of Osage surplus lands under Act of March 3, 1909.—The Act of Congress approved March 3, 1909,¹⁵ authorizes the Secretary, upon application of any member of the Kaw or Kansas or Osage Tribes of Indians to sell, under such rules and regulations as he may prescribe, any part or all of the surplus lands of such member. The sale of Osage lands to be subject to the reserved right of the tribe in oil, gas, and other minerals. The proceedings for sale are initiated by an application made through the agency at Pawhuska. The application should contain an agreement that the lands may be sold on such terms and under such conditions as may be prescribed by the Secretary of the Interior, and the proceeds be handled and disposed of for the benefit of the ap-

¹³ *United States v. Aaron* (C. C.) 183 Fed. 347; *United States v. Board of Com'rs of Osage County* (C. C.) 193 Fed. 485; *Hunter v. Hooper*, 132 Pac. 490; *Clawson v. Cottingham*, 34 Okl. 493, 125 Pac. 1114; *Neilson v. Alberty* (Okl.) 129 Pac. 847; *Levindale Lead & Zinc Mining Co. v. Coleman* (Okl.) decided June 10, 1913, and pending on rehearing.

¹⁴ *Neilson v. Alberty* (Okl.) 129 Pac. 847.

¹⁵ See section 1070.

plicant in such manner as the Commissioner of Indian Affairs may direct. Departmental regulation of the sale of surplus lands of Kansas or Kaw and Osage allottees has been subject to frequent change. When seeking to secure the sale of such lands of a member of either of such tribes it is best to secure a copy of the latest regulation and comply with the same. If the rules and regulations are not observed the Secretary will neither order nor approve the sale.

§ 138a. Alienation of Osage Allotted and Inherited Lands as Affected by Act of April 18, 1912.—By section 3 of the Act of April 18, 1912,* the property of deceased, orphan minor, insane and other incompetent allottees of the Osage Tribe as determined by the laws of the state of Oklahoma, are declared to be subject to the jurisdiction of the county courts of the state, but no land of such minor, insane or incompetent allottee may be alienated under said act without the approval of the Secretary of the Interior.

Section 6 of the act authorizes the sale or partition of lands of deceased Osage allottees. Where a minor heir in a partition proceeding has no regular guardian he must be represented by a guardian ad litem appointed for that purpose. The partition or sale when ordered by the court must, before becoming effective, be approved by the Secretary of the Interior.

Restrictions upon alienation are removed as to heirs who have certificates of competency and as to those who are not members of the tribe.

Under section 7 lands allotted to members of the Osage Tribe may not in any manner be incumbered, taken or sold to secure or certify any debt or obligation contracted or incurred prior to issuance of certificate of competency or removal of restrictions on alienation. Nor may such lands be subjected to any claim against the same arising prior to

*37 Stat. 86, c. 83. Also see legislation under title "Osages."

the grant of a certificate of competency, nor may any inherited land be taken or sold to secure the payment of any indebtedness incurred by the heir prior to the time such land is turned over to him.

The word "competent" is defined as meaning a person to whom a certificate has been issued authorizing alienation of allotted lands exclusive of homestead.

§ 139. Alienation—Restrictions on by Otoe, Ottawa, Ponca, Shawnee, Seneca, and Wyandotte.—The lands of the Otoe, Ottawa, Ponca, Shawnee, Seneca and Wyandotte reservations were allotted to the members of said tribes, respectively, by executive order, under the General Allotment Act of 1887. There does not seem to have been any special legislation applicable to the allottees of either of said tribes. The right of the allottees of each of said tribes, and of their heirs, to alienate allotted and inherited land is controlled by the General Allotment Act, amendments thereto, and subsequent legislation elsewhere discussed.

§ 140. Alienation—Restrictions on by Ottawa, Shawnee, Seneca and Wyandotte, as affected by Act of March 3, 1909.—The Act of March 3, 1909, authorizes the Secretary of the Interior, upon application of any adult member of any one of the tribes belonging to the Quapaw Agency in the state of Oklahoma, to remove restrictions on alienation on any part or all of the land allotted to such applicant and to permit a sale thereof on such terms and conditions as he may prescribe. The authority of the Secretary to remove restrictions extends to the entire allotment, with the exception of forty acres, which is required to be designated and held as a homestead.

§ 141. Alienation—Restrictions on — Pawnee.—Allotments were made to members of the Pawnee tribe of Indians under an agreement approved March 3, 1893.¹⁶ Allotments were being made to the members of this tribe at

¹⁶ See chapter 71.

the time of the making of the agreement on order of the President under the General Allotment Act.

The Pawnee agreement provides that the title to allotments made to Pawnees shall, except as otherwise expressly provided, be governed by all the conditions and limitations contained in the General Allotment Act, and the amendment thereof of February 28, 1891.

It is not otherwise expressly provided, so that the effect of this agreement is to subject Pawnee allotments to the provisions of the General Allotment Act, amendments thereto, and subsequent legislation sufficiently broad to be applicable to same.

§ 142. **Restrictions on alienation—Peoria, Kaskaskia, Piankeshaw, Wea and Western Miami.**—Notwithstanding the provisions of the General Allotment Act were extended to these tribes and their reservation by the Act of March 2, 1889,¹⁷ said act specifically provided that the lands allotted to members of said tribe should not be subject to alienation for twenty-five years from date of issuance of patent, and should be exempt during said period from levy, sale, taxation, or forfeiture. The statute requires the patent issued to the allottee to recite that the land therein described and conveyed shall not be alienated for twenty-five years from date of patent, and that it is not subject to levy, sale, taxation, or forfeiture, for a like period, and that any contract, agreement to sell or convey such lands or allotments so patented, entered into before the expiration of such time, shall be absolutely null and void.

§ 143. **Confederated Peoria—Alienation of lands of allottees in excess of one hundred acres authorized by the Act of June 7, 1897.**—It is provided by the Act of June 7, 1897,¹⁸ "That the adult allottees of land in the Peoria and

¹⁷ *Buck v. Branson*, 34 Okl. 807, 127 Pac. 436; *United States v. Rundell* (C. C.) 181 Fed. 887; *Bowling v. United States*, 191 Fed. 19, 111 C. C. A. 561.

¹⁸ Act June 7, 1897, c. 3, 30 Stat. 72.

Miami Indian reservation in the Quapaw Agency, Indian Territory, who have each received allotments of two hundred acres or more may sell one hundred acres thereof, under such rules and regulations as the Secretary of the Interior may prescribe."

This act is plain and unambiguous. Its application is to allottees who have received in allotment two hundred acres or more. Its authority is to convey upon approval of the Secretary of the Interior.

§ 144. Alienation—Restrictions on surplus lands—By Peoria, Kaskaskia, Piankeshaw, Wea and Western Miami—Removed.—The Indian Appropriation Bill of May 27, 1902,¹⁹ contains the following provision applicable to these tribes, to wit: "That so much of the act approved March 2, 1889, entitled 'An act to provide for the allotment of lands in severalty to United Peorias and Miamis in the Indian Territory, and for other purposes,' which inhibits the sale of their surplus land for twenty-five years from said date, be, and the same is hereby, repealed." Under this provision the surplus lands of the allottees of these tribes became immediately alienable.

§ 145. Alienation—Secretary authorized to remove restrictions on—Of Peoria, Kaskaskia, Piankeshaw, Wea and Western Miami.—On March 3, 1909, the President approved an act authorizing the Secretary of the Interior to sell any or all tribal lands within the jurisdiction of the Quapaw Agency, and upon application of any adult member of either of the tribes belonging to the Quapaw Agency in the state of Oklahoma to remove the restrictions on any part or all of the lands allotted to such applicant, and to permit a sale under such terms and conditions as he should deem for the best interest of such applicant, excepting a tract of not less than forty acres, which is to be designated and held as a homestead. In other words, the Secretary is authorized to remove restrictions on alienation under

¹⁹ Act May 27, 1902, c. 888, 32 Stat. 263.

such rules and regulations as he may prescribe as to all allotted lands, except forty acres or more, to be designated as a homestead. This provision did not apply to the Modoc Tribe.

§ 146. **Alienation—Restrictions on—Quapaw.**—The tribal lands of the Quapaws were allotted by order of the National Council of the tribe, and the allotments so made were ratified and confirmed and approved by the Act of March 2, 1895.²⁰ The Secretary of the Interior was authorized to issue patents to allottees in accordance with the provisions of said act.

Allotments to members of the Quapaw tribe are made inalienable for a period of twenty-five years from date of patent. It has been held that the restrictions upon alienation, under the Quapaw agreement, run with the land, and prohibit not only the allottee but his heirs from conveying within the prescribed period.²¹

The Secretary of the Interior is authorized by the Act of March 3, 1909,²² upon application of an adult member of the Quapaw tribe of Indians to remove restrictions upon any part or all of the allotted lands, except the homestead, of said applicant, and to permit the sale thereof, under such terms and conditions as he may deem for the best interest of the applicant.

§ 147. **Restrictions on alienation—Sac and Fox.**—Under the Sac and Fox Allotment Agreement the Secretary of the Interior is required to cause patents to issue in the name of the allottees, which shall be of legal effect and declare that the eighty acres of land designated and described by the allottee shall be held in trust by the United States for a period of twenty-five years for the sole use and benefit of the allottee or his heirs, according to the laws of

²⁰ See chapter 74.

²¹ *Goodrum v. Buffalo*, 162 Fed. 817, 89 C. C. A. 525; *United States v. Abrams* (C. C.) 181 Fed. 847; *United States v. Abrams*, 194 Fed. 83, 114 C. C. A. 160; *Tidwell v. Dobson* (Okl.) 131 Pac. 693.

²² See chapter 75.

the state or territory where the lands are located, and that the other eighty acres shall be held in trust by the United States for a period of five years, or if the President of the United States will consent, for fifteen years, under like conditions, and at the expiration of the trust period the United States will convey by patent to the allottee or his heirs the allotted lands in fee, discharged from such trust and free of all incumbrances. Final patents were not to issue to an orphan until he or she should have attained the age of twenty-one years or should have married. In order to prevent the question of age being made subject to future inquiry, it was agreed that the same should be fixed and ascertained by the person making the allotment, and by him reported to the Department of the Interior, and the age of any allottee so reported should be conclusive in carrying out the provisions of the agreement. The provision with reference to the eighty acres selected as a homestead is in substance the same as that of the General Allotment Act. The eighty acres in excess of the homestead is also held under provisions similar to those of the General Allotment Act, but for a limited period of five years, or for fifteen years if the President shall so direct, though there is no direct provision against alienation. Such lands are undoubtedly, in the absence of further legislation, inalienable during the trust period.

§ 148. Alienation—Restrictions on by Wichita and affiliated bands.—The Indian Appropriation Act approved March 2, 1895,²³ contains an agreement between the United States and the Wichita and affiliated bands for the allotment in severalty of the Wichita reservation. There was located upon the Wichita reservation and affiliated with the Wichita tribe a few scattering members from tribes located in Oklahoma and elsewhere. These were termed affiliated members of the tribe, and received allotments pursuant to said agreement, and not in accordance with the

²³ See chapter 78.

allotment agreement with the tribe to which they originally belonged, and from which they had become separated. Under this agreement the title of the allottees of the Wichita reservation is to be held in trust for a period of twenty-five years, in the manner and to the extent provided in the General Allotment Act. It also contains specific provision that the title to the allotment shall, at the expiration of twenty-five years, be conveyed to the allottee or his heirs free from all incumbrance.

The right to alienate by Wichita allottees is controlled by the General Allotment Act, amendments thereto and subsequent legislation affecting the right of alienation of allottees of Indian lands in Oklahoma.

CHAPTER 18

AGE AND QUANTUM OF INDIAN BLOOD

- § 149. Age and quantum of Indian blood—Legislation relating to.
150. Age—What constitutes enrollment records of Commission as to.
151. Provisions of Acts of April 28, 1906, and May 27, 1908, constitutional.

§ 149. **Age and Quantum of Indian Blood—Legislation Relating to.**—None of the allotment agreements with the Five Civilized Tribes made any distinction in the control and disposition by allottees of their allotted lands on account of age or quantum of Indian blood. Who were minors and the effect of minority was left subject to regulation by the general statutes in force in the Indian Territory relating to minority. The first legislation making a distinction in the right of alienation based upon Indian blood is found in the Act of April 21, 1904. This act removed restrictions on alienation of the surplus allotments of adult allottees not of Indian blood.

It will be observed that the distinction here is not as to the quantum of Indian blood, but as to the presence or absence of Indian blood.

Section 19 of the Act of April 26, 1906, is in part as follows: "That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole Tribes shall have power to alienate, sell, dispose of, or incumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this Act, unless such restrictions shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior * * *."

Section 3 of the Act of May 27, 1908, is in part as follows: "That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes and of no other persons to determine questions arising under this Act and the enrollment records of the Commissioner to the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman."

It was discovered in the administration of the affairs of the Five Civilized Tribes that it was difficult, if not impossible, to ascertain with absolute accuracy either the age or quantum of Indian blood of the majority of the members of said tribes. Few records of births were kept and no records of the quantum of Indian blood. Any law permitting alienation based upon the quantum of Indian blood and fixing no means of ascertaining such quantum would open the door to unlimited uncertainty and litigation. These and similar reasons, are no doubt responsible for the enactment of the statutes above quoted.

Final rolls of membership of the Five Civilized Tribes were compiled and printed under authority of an act of Congress approved June 21 1906.¹ The publication is entitled "The Final Rolls of Citizens and Freedmen of the Five Civilized Tribes in the Indian Territory Prepared by the Commission and Commissioner to the Five Civilized Tribes and Approved by the Secretary of the Interior on or Prior to March 4, 1907." The membership rolls are complete in one volume of 634 pages. The names are arranged in numerical order in accordance with the number of the

¹ Act June 21, 1906, c. 3504, 34 Stat. 325-340. That part of the statute applicable is as follows: "That the Secretary of the Interior shall, upon completion of the approved rolls, have prepared and printed in a permanent record book such rolls of the Five Civilized Tribes, and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection." *Rice v. Anderson* (Okl.) 134 Pac. 1121.

application for enrollment. An index to the membership rolls was therefore necessary, and was prepared by the Secretary of the Interior under authority of the same act, and is entitled "Index to the Final Rolls of Citizens and Freedmen of the Five Civilized Tribes in the Indian Territory Prepared by the Commission and Commissioner to the Five Civilized Tribes and Approved by the Secretary of the Interior on or Prior to March 4, 1907."

The printed rolls show the name, age, sex, quantum of Indian blood and the number of the census card containing the information from which the data found in the printed rolls was made up.

Some of the rolls show the age of the member or freedman calculated to a given date, from which the present age may be ascertained without reference to other records. Other of the rolls show the age calculated to the date of enrollment, and to find the present age it is necessary to secure the date of enrollment.

§ 150. Age—What Constitutes Enrollment Records of Commissioner as to.—There seems to be much misapprehension as to what constitutes the enrollment records of the Commissioner to the Five Civilized Tribes, which are made conclusive as to the age of citizens and freedmen of the Five Civilized Tribes by the Act of May 27, 1908. At the request of the author the Commissioner to the Five Civilized Tribes prepared a concise statement of what constitutes the enrollment records in his office as applicable to the age of citizens and freedmen. The statement is as follows:

"The enrollment records, in the matter of the enrollment of any person as a citizen or freedman of the Five Civilized Tribes, consist of the application made for their enrollment, together with all of the records, evidence and other papers filed in connection therewith prior to the rendition of the decision granting the application.

"In the early days of enrollment in the Five Civilized

Tribes appointments were made by the Commission at various places in the different nations at which the Indians and freedmen appeared to make application for enrollment. At that time the applicants were duly sworn before a notary public, but their testimony was only taken orally and placed upon a card, with the exception of Cherokees. Written testimony was taken in all Cherokee cases. In a great majority of the early enrollments, except Cherokee cases, the only records shown are the statements that were thus taken from the applicants personally and placed on the cards, which constitute the enrollment record, together with any other evidence that may have been obtained. In a great many instances, at that time, where there was doubt as to the rights of the applicants to enrollment, and they could not then be identified from the tribal rolls, the written testimony of the applicants was taken and made a part of the record. Additional testimony was also taken at later dates.

"As the work proceeded, and the enrollment of all citizens by blood or intermarriage, and freedmen, who were clearly identified upon the tribal rolls was completed, written testimony was taken in all doubtful cases. Written testimony was also taken in all applications made for the identification of Mississippi Choctaws and in practically all other cases as the work neared completion.

"The tribal rolls of the various nations came into the possession of the Commissioner to the Five Civilized Tribes, and were used for identification and as a basis for enrollment.

"As enrollments were completed, the names of all persons whom the Commission had decided were entitled to enrollment were placed on the rolls. These rolls show the name, age, sex, degree of blood and the number of the census card, which is generally known as the 'enrollment card,' on which each citizen was enrolled, and a number was placed opposite each name appearing on this roll, beginning at 1 and running down until the final number was com-

pleted. This roll was made out in quintuplicate and forwarded to the Secretary of the Interior for his approval, who approved same if he found no objections thereto and returned three copies for the files of this office. The roll thus approved is known as the 'approved roll,' and is the basis on which allotments were made, except in the cases of a large number of Creeks, to whom allotments were made before the approval of their enrollment, which allotments were subsequently confirmed by Congress.

"The Secretary of the Interior holds, for the purposes of the government, that the date of the application for enrollment shall be construed as the date of the anniversary of the birth of the applicant, unless the records show otherwise.

"The Act of Congress makes the *enrollment records* of the Commissioner to the Five Civilized Tribes conclusive evidence in determining the ages of allottees of the Five Civilized Tribes. The enrollment records consist of:

"First, what is known as the 'census card'; that is, the card on which the applicant was listed for enrollment. Sometimes in the early enrollment some persons were listed on what is known as a 'doubtful card,' and later on the names appearing on the doubtful cards were transferred to a regular census card, when the Commission rendered its decision holding that they were entitled to enrollment. It has been discovered, in looking over the enrollment records in many cases, that sometimes the date shown on the lower right-hand corner is the date on which they were transferred from the doubtful card, and not the date on which application was made for their enrollment. In such cases, in the absence of any other testimony or evidence, the date shown on the doubtful card is the date on which application was made for enrollment;

"Second, all testimony taken in the matter of the application at various times prior to rendition of the decision granting the application;

"Third, birth affidavits, affidavits of death, and other evidence and papers filed in connection with the application made for enrollment; and

"Fourth, the enrollment as shown on the approved roll.

"Persons seeking information as to the ages of allottees should ask to be furnished with a certified copy of the *enrollment records* pertaining thereto. Scarcely any testimony was taken in the enrollment of Seminoles, save orally, which is shown on the census cards. No date was placed on these cards at the time of enrollment; consequently they are not of much value in determining the ages of the persons whose names appear thereon. A certificate appears on the approved Seminole roll, showing the dates the enrollments were made, which dates will probably govern in determining their ages, in the absence of any other testimony or evidence in the enrollment records to the contrary."

In the cases of minors enrolled under the Acts of Congress of March 3, 1905, and April 26, 1906, birth affidavits were required. These affidavits are on file and show the exact date of birth of the applicant.

§ 151. Provisions of Acts of April 26, 1906, and May 27, 1908, Constitutional.—On first consideration the provisions of these acts, making the rolls conclusive evidence of the quantum of Indian blood and the enrollment records in the office of the Commissioner to the Five Civilized Tribes conclusive evidence of age of members of the Five Civilized Tribes and freedmen, appear to fix, by legislative fiat, what can be considered and adjudged only in judicial proceedings.

There are three possible interpretations of these provisions.

The first is that inasmuch as each of the acts remove or extend restrictions upon alienation, and such removal or extension is dependent in part at least upon the age and quantum of Indian blood, it was intended that they should

be applied only for the purpose of measuring the right of alienation thereunder. In view of the language of both acts, it is probable that this is too narrow an interpretation. Under this interpretation there could be no question of constitutionality. A member of the tribe having no right to alienate, except upon the terms permitted, would not be heard, after accepting the authority to alienate, to challenge the constitutionality of the regulation under which he exercised the right. A purchaser purchasing subsequent to the act could not complain, as he would have no right to be prejudiced thereby.

Another interpretation of these acts is to hold them applicable to all transactions involving age and quantum of Indian blood, whether such transactions occurred prior or subsequent to the act. Such interpretation, whenever the enrollment records came in conflict with the actual facts, would operate to declare, by legislative fiat, conveyances invalid which were valid at the time of the making, and likewise conveyances valid which were invalid at the time of the making. These acts, so interpreted and applied, would, in all probability, be violative of the constitutional rights of those persons adversely affected thereby.²

Another interpretation, and the one believed to express the purpose sought to be accomplished, is to apply the provisions thereof to all conveyances made subsequent to the passage of said acts, wherever the provisions thereof are applicable, and not to apply such requirements to any conveyance made or transaction occurring prior to the time such acts became effective.³

Considering the plenary power of Congress in the premises, these acts, so interpreted, would not be subject to constitutional objection.³

² *Williams v. Joins*, 34 Okl. 733, 126 Pac. 1013; *Rice v. Ruble* (Okl.) 134 Pac. 48; *Hegler v. Faulkner et al.*, 153 U. S. 109, 14 Sup. Ct. 779, 38 L. Ed. 653.

³ *Bell v. Cook* (C. C.) 192 Fed. 597; *Yarbrough v. Spalding*, 31 Okl. 806, 123 Pac. 843; *Williams v. Joins*, 34 Okl. 733, 126 Pac. 1013;

The rolls of members of the Five Civilized Tribes were prepared by the Commission to the Five Civilized Tribes under the supervision of the Secretary of the Interior as a basis for the allotment of tribal lands and distribution of tribal property.⁴ The rolls were so made up as to show the age, sex and degree of Indian blood, if any, of enrolled members. These enrollment records and membership rolls were made by an impartial tribunal at a time when no issue existed that could affect either the impartiality of the Commission or of the witnesses giving evidence as to the age and quantum of Indian blood. It furnishes a fixed standard by which the purchaser of allotted or inherited Indian lands may ascertain the age and quantum of Indian blood for the purpose of determining the right to purchase. It forecloses future controversy, where the interest of the persons involved might induce the making of false statements or the giving of false evidence as to either the age of the grantor at the time of the making of the conveyance or of the quantum of Indian blood.

"If an intending purchaser from an allottee of tribal property, holding the public rolls in one hand, and the act in the other, by a comparison of the two found such allottee possessed the power of disposition under the act and the rolls, he was at liberty to purchase, and he was protected in such purchase. If, on the contrary, the law and the public rolls, considered together, denied the right of the allottee to convey, a purchaser from such allottee was not protected and this, regardless of the true state of facts as they might be made to appear. * * *"

The last-mentioned interpretation of the two acts has received substantial judicial confirmation, and it has also been held that such rolls are exclusive evidence of age.*

Campbell v. McSpadden, 34 Okl. 377, 127 Pac. 854; *Lawless v. Rad-dis* (Okl.) 129 Pac. 711; *Bruner v. Cobb* (Okl.) 131 Pac. 165; *Rice v. Ruble* (Okl.) 134 Pac. 48; *Hegler v. Faulkner et al.*, 153 U. S. 109, 14 Sup. Ct. 779, 38 L. Ed. 653.

* *Kimberlin v. Commission to Five Civilized Tribes*, 104 Fed. 653, 44 C. C. A. 109.

* *Bell v. Cook* (C. C.) 192 Fed. 597.

* *Rice v. Anderson* (Okl.) 134 Pac. 1121.

CHAPTER 19

CONVEYANCES

- § 152. In territory and state of Oklahoma.
- 153. Indian Territory prior to statehood.
- 154. Conveyances by married women.
- 155. Relinquishment of dower by married women in the Indian Territory.
- 156. Acknowledgment to conveyances of real estate in Indian Territory.
- 157. Officers authorized to take acknowledgments in the Indian Territory.
- 158. Registration of conveyances.
- 159. Conveyance before allotment void.
- 160. Conveyance or incumbrance before removal of restrictions void.
- 161. Conveyance of land in adverse possession invalid.
- 162. Void conveyances as declared under the Act of May 27, 1908.

§ 152. In territory and state of Oklahoma.—Conveyances of allotted Indian lands in the territory of Oklahoma were subject to the general laws of the territory relating to conveyances of real estate, acknowledgment, registration, etc., unless specifically excepted therefrom, or special provision had been made by treaty, agreement, or act of Congress prescribing a different rule.

It is not proposed to discuss the general law relating to conveyances of real estate during such period, but to make brief mention of the statutes in force and applicable to this subject at various dates prior to statehood. The statutes of the territory of Oklahoma of 1890, the first laws of the territory, contained two separate and distinct chapters, each regulating the execution, acknowledgment and registration of conveyances of real estate. The first of these was chapter 23, entitled "Conveyances," and the second, chapter 86, entitled "transfers." These two chapters were continued in force by the statutes of 1893 without modification; chapter 23 of the statutes of 1890 as chapter 21 of the Statutes of 1893, and chapter 86 of the Statutes of 1890 as chapter 82 of the Statutes of 1893. These double provisions remained

in force in the territory of Oklahoma until 1897. In that year the Legislature enacted a conveyance statute which became effective May 1, 1897, which, in specific terms, repealed chapters 21 and 82 of the Statutes of 1893. The chapter on Conveyances of 1897 (Laws 1897, c. 8) was amended in 1901 (Laws 1901, c. 10), and again in 1903 (Laws 1903, c. 8). The act of 1897, with the amendments thereto of 1901 and 1903, and a further amendment of 1909, appear in the Compiled Laws of 1909, c. 18, §§ 1187-1221, entitled "Conveyances," and in the Revised Laws of 1910 as chapter 13.

There is also found in the Statutes of 1890 a provision penalizing the purchase of lands held in adverse possession. This provision was continuously in force in the territory of Oklahoma, and was brought over as a statute of the state by the provisions of the Enabling Act. It has been construed by the courts, state and federal, to render conveyances, made in violation thereof, void as to all persons except the grantor making the same.

The statutes regulating the acknowledgment of conveyances during the territorial period are those in force at the present time.

A conveyance or incumbrance of the homestead should be executed by both husband and wife, and is ineffectual as to either not joining therein. Such a conveyance may be made by either husband or wife of the homestead, where the other has voluntarily abandoned the grantor for more than a year. Deeds should be signed by the grantor and be acknowledged before some officer authorized by law to take acknowledgments. The certificate of acknowledgment should recite that the grantor is known to the officer taking the same, and that he (the grantor) acknowledged that he had executed the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Under the statute, "signature or subscription includes mark when the person cannot write, his name being written near it and written by a person who writes his own name

as a witness.”¹ Where the mark is made by one person and the name of another written as a witness, the statute is not complied with; but an officer’s certificate of the grantor’s acknowledgment of the execution of a deed is a sufficient compliance with the requirement of the identification by witnesses to the grantor’s signature by mark.²

§ 153. **Indian Territory prior to statehood.**—Prior to the 19th day of February, 1903, there was no statute in force in the territory of the Five Civilized Tribes regulating, controlling or affecting the execution, acknowledgment or registration of conveyances of real estate. On that date Congress put in force in the Indian Territory chapter 27 of Mansfield’s Digest of the Statutes of Arkansas of 1884.³

This statute, so far as it dealt with the subject-matter, controlled the effect of conveyances of real estate, the proof and acknowledgment thereof, required registration and determined the probative effect of such conveyances. Conveyances of real estate in adverse possession were specifically authorized. All lands, tenements and hereditaments, whether in possession of the grantor or held adversely, and every interest therein, were made alienable by deed or grant.

The wife, as a result of marriage, was endowed with a third part of all the lands whereof her husband was seised of an estate of inheritance at any time during marriage, and such right of dower attached upon the death of the husband, notwithstanding any conveyance made by him of such lands, unless dower had been relinquished in the form prescribed by the statute.

The word “heirs” was not necessary to create or convey an estate in fee simple. Every deed, unless expressly limited by appropriate words, was made to pass a fee simple title. The words “grant, bargain and sell” in and of them-

¹ *Campbell v. Harsh*, 31 Okl. 436, 122 Pac. 127; *Watson v. Billings*, 38 Ark. 278, 42 Am. Rep. 1.

² *Campbell v. Harsh*, 31 Okl. 436, 122 Pac. 127.

³ Reproduced in full as chapter 54.

selves constituted an express covenant of an indefeasible estate in fee simple free from incumbrances done or suffered by the grantor and of quiet enjoyment.

§154. **Conveyances by married women.**—By the Act of May 2, 1890, certain chapters of Mansfield's Digest, including chapter 104, entitled "Married Women" were extended over the Indian Territory. Section 4621 of this chapter, which is the first section, reads as follows: "The real and personal property of any feme covert in this state, acquired either before or after marriage whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose be and remain her separate estate and property and may be devised, bequeathed or conveyed by her the same as if she were a feme sole and the same shall not be subject to the debts of her husband."

Under the decisions of the Supreme Court of Arkansas, construing this statute, a married woman could convey and acknowledge as a feme sole. She could not, however, bind herself by a bond for title or other executory agreement, but she might mortgage her property to secure the debt of her husband.

Section 4621 is copied from the Constitution of Arkansas of 1874. Previous to 1874, both under the Constitution and the statutes, the conveyance by a married woman of her property had to be joined in by her husband. By mistake of the digester the old provision in the chapter on Conveyances with reference to the acknowledgment of a married woman, in force prior to the adoption of the Constitution of 1874, was continued in the statute. It is section 659, found in the chapter entitled "Conveyances of Real Estate," and is as follows: "The conveyance of any real estate by any married woman, or the relinquishment of dower in any of her husband's real estate, shall be authenticated and the title passed, by such married woman voluntarily appearing before the proper court, or officer, and in the absence of her husband declaring that she had of her

own free will executed the deed or instrument in question, or that she had signed the relinquishment of dower for the purposes therein contained, or set forth without compulsion or undue influence of her husband."

The chapter containing this section having been put in force in 1903 subsequent to the extension of the chapter on married women over the Indian Territory, some question has arisen as to whether a conveyance by a married woman is valid where not joined in and acknowledged by her husband. Section 659 was not in force in Arkansas. The recording act, however, does not, like some of the previous acts, extend only such laws as are in force in Arkansas; but the language is that "chapter 27 of the Digest of the Statutes of Arkansas, known as Mansfield's Digest of 1884, is hereby extended to and put in force in the Indian Territory so far as the same may be applicable and not inconsistent with any law of Congress." It is not believed that Congress intended to deprive a married woman of the liberty given her under the married woman's act and recognized by every other law in force in the Indian Territory at that time. Such a conveyance made by a married woman and acknowledged as a feme sole passes title to her separate property.⁴

§ 155. Relinquishment of dower by married women in the Indian Territory.—The wife could relinquish her dower in her husband's real estate during his lifetime or convey her unassigned dower interest subsequent to his death. There seems, however, to have been some doubt as to whether she could convey, otherwise than jointly with the heirs, to the heirs, or to some person to whom the estate, other than the dower interest, had been conveyed.⁵

The relinquishment of dower in the husband's real estate

⁴ *Adkins v. Arnold*, 32 Okl. 167, 121 Pac. 186.

⁵ *Carnall v. Wilson*, 21 Ark. 62, 76 Am. Dec. 351; *Jacoway v. McGarrah*, 21 Ark. 347; *Reed v. Ash*, 30 Ark. 775; *Countz v. Markling*, 30 Ark. 17; *Pillow v. Wade*, 31 Ark. 678; *Weaver v. Rush*, 62 Ark. 51, 34 S. W. 256; *Barnett v. Meacham*, 62 Ark. 313, 35 S. W. 533.

was required to be authenticated and the title passed by the wife appearing before the proper officer, in the absence of the husband, and declaring "that she had, of her own free will, signed the relinquishment of dower for the purposes therein contained and set forth without compulsion or undue influence of her husband." *

§ 156. **Acknowledgments to conveyances of real estate in Indian Territory.**—Two methods of acknowledgments or proof of conveyances of real estate were permissible under the Arkansas statute put in force in the Indian Territory; the first by the grantor appearing before a notary public or other officer authorized to take acknowledgments and stating that he had executed the same for the consideration and purposes therein mentioned and set forth. If the grantor was personally unknown to the officer taking the acknowledgment, his identity as the person executing the conveyance was required to be ascertained upon the oath of some person known to such officer before taking the acknowledgment.

The other method of acknowledgment was that of the execution of the instrument in the presence of two disinterested witnesses, or the acknowledgment of the execution by the grantor in the presence of such witnesses, who were required to subscribe the deed or instrument of writing as witnesses, with the date of their signatures thereto if signed after date of execution. One of such witnesses must then appear before an officer authorized by law to take acknowledgments and state on oath that he saw the grantor subscribe such conveyance, or that the grantor acknowledged in his presence that he had subscribed or executed such conveyance, for the purposes and consideration therein mentioned and set forth, and that he had subscribed the same as a witness at the request of the grantor.

Prior to the adoption of these statutes and their extension over the Indian Territory, the Supreme Court of the

* *Stidham v. Matthews*, 29 Ark. 650.

state of Arkansas had been more than usually strict in requiring acknowledgments to comply literally with the language of the statute and in denying such instruments the right to registration or effect as notice where they failed to do so.⁷

Mortgages, leases for more than a year, and instruments fixing liens or charges upon real estate were required to be executed, acknowledged and recorded as conveyances of real estate were required to be executed, acknowledged and recorded.

§ 157. Officers authorized to take acknowledgments in the Indian Territory.—Prior to statehood, proof or acknowledgment of conveyances of real estate could be taken within that part of the state known as the Indian Territory before any notary public, justice of the Supreme Court, or clerk of any court of record.

Conveyances could be acknowledged or proven without the Indian Territory before any court of the United States, or state or territory thereof, having a seal, before the clerk of such court, or before a notary public, the mayor of a city or town, a commissioner appointed by the Governor of the state, or a chief officer of a city or town having a seal; when without the United States, before any court, mayor, or chief officer of a town having a seal, or any officer of a foreign country authorized by the laws of such country to take acknowledgments of real estate, provided such officer had, by law, an official seal.

§ 158. Registration of Conveyances.—Prior to the 19th day of February, 1903, there was no statute in force in the Indian Territory providing for the registration or recording of conveyances of real estate. By common consent instruments conveying real estate had been recorded in the office of the clerks of the United States court at various places at which these offices were located in the Indian Territory. By the act above referred to provision was made for

⁷ See chapter 54 and annotations thereto.

the recording of deeds and other conveyances and instruments in writing affecting lands situated in the Indian Territory, and chapter 27 of Mansfield's Digest of the Statutes of Arkansas of 1884 was extended over and put in force in the Indian Territory. This act also created recording districts. Subsequently and at various times the numbers of these recording districts were increased, thereby reducing the boundary of the other districts.

By the provisions of Mansfield's Digest put in force by the act above referred to no conveyance of real estate was entitled to be admitted to record unless its execution was either acknowledged or proven as required by the provision of said chapter. It was also further provided that no conveyance of any real estate, or conveyance by which the title thereto might be affected, should be good or valid against a subsequent purchaser for a valuable consideration, or against a creditor of the grantor obtaining a judgment or decree constituting a lien upon such real estate, unless such instrument be duly acknowledged or proven and filed for record in the office of the recorder of the county in which the real estate is situated. Briefly stated, acknowledgment was necessary to registration, and registration was necessary for the protection of the purchaser.

§ 159. Conveyance before allotment void.—In many instances intermarried citizens and freedmen, before the selection of their lands in allotment, either conveyed or contracted to convey the same, and the courts have been called upon to consider and determine the validity of such contracts. Contracts to purchase have usually been accompanied by a deed, duly executed, conveying in general terms the surplus allotment, or that part thereof which would be alienable, or by an agreement to thereafter execute such deed when the lands have been selected in allotment.

Frequently these contracts were made when the citizenship of the party making the same was denied, and when such party was not the owner of the improvements upon,

or in the possession of, any tribal lands holding the same for the purpose of allotment. These conveyances have usually been based upon the Act of April 21, 1904, removing restrictions upon alienation; it being insisted that if the member of the tribe was an adult, and not of Indian blood, such act conferred upon him authority to alienate his surplus lands prior to selection of the same in allotment. The provision is in part as follows: "All of the restrictions upon the alienation of lands of *allottees* of either of the Five Civilized Tribes," etc., "are hereby removed."

It is the restrictions upon alienation of the lands of *allottees* that are removed. The word "allot" means to set apart a thing to a person as his share. A member of the tribe does not become an allottee until he selects his allotment and the selection is accepted. Prior to that time he is not an allottee. Subsequent to that time he is, as to the land selected and set apart to him, an allottee. Prior to that time the tribal land, so far as he is concerned, is the public land of the tribe. His right to select an allotment is merely the common tribal right in the public land of the tribe and is not subject to alienation. A conveyance made before allotment being void, no title or right passes thereby, nor does the title in such case pass to the grantee when it vests in the grantor. The doctrine of relation has no application to such a conveyance.⁸

§ 160. Conveyance or incumbrance before removal of restrictions void.—The agreements with each of the Five Civilized Tribes contain specific prohibitions against alienation during the restricted period. The purpose of these various provisions is to prevent, not only alienation during the restricted period, but the incumbrance of the restricted

⁸ *McKee v. Henry* (C. C. A.) 201 Fed. 74; *Bledsoe v. Wortman*, 35 Okl. 261, 129 Pac. 841; *Lynch v. Franklin* (Okl.) 130 Pac. 599; *McLaughlin v. Ardmore Loan & Trust Co.*, 21 Okl. 173, 95 Pac. 779; *Smith & Steele v. Martin*, 28 Okl. 836, 115 Pac. 866; *Howard v. Farrar*, 28 Okl. 490, 114 Pac. 695; *Allen v. Oliver*, 31 Okl. 356, 121 Pac. 226.

lands by any deed, debt, or obligation of any character, contracted during the period when alienation is prohibited from being effective, to compel enforced alienation after the expiration or removal of restrictions.⁹ The courts have uniformly held that conveyances made before the removal of restrictions, or agreements made before to become effective after the removal of restrictions, are absolutely void and incapable of enforcement under any circumstances. In other words, a prohibition against alienation renders a conveyance void made in violation of such prohibition, whether the statute containing the prohibition so declares or not.

By section 19 of the Act of April 26, 1906, it was provided: "and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby declared void * * *." So far as this provision relates to conveyances executed before the removal of restrictions, it is but an affirmation of the existing rule. So far as it declares conveyances void because made pursuant to an agreement entered into before the removal of restrictions, it enlarges the prohibition contained in the various allotment agreements. It has been held, considering this statute, that mere negotiations looking to a purchase after the removal of restrictions, where neither party was bound thereby, are not within the condemnation of the statute, and do not bring a conveyance made subsequent to the removal of restrictions within the terms of the statute. In other words, the agreement contemplated by the state is one of the character that would be binding upon the parties, but

⁹ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Goodrum v. Buffalo*, 162 Fed. 817, 89 C. C. A. 525; *Hayes v. Barringer*, 168 Fed. 121, 93 C. C. A. 507; *Lewis v. Clements*, 21 Okl. 167, 95 Pac. 769; *Howard v. Farrar*, 28 Okl. 490, 114 Pac. 695; *Simmons v. Whittington*, 27 Okl. 356, 112 Pac. 1018; *Harper v. Kelly*, 29 Okl. 809, 120 Pac. 293; *Turner v. Gilliland*, 4 Ind. T. 606, 76 S. W. 253; *Denton v. Capital Townsite Co.*, 5 Ind. T. 396, 82 S. W. 853; *Sayre v. Brown*, 7 Ind. T. 675, 104 S. W. 877; *Harris v. Hardridge*, 7 Ind. T. 532, 104 S. W. 826.

for the fact that the object to be affected thereby is in violation of law, and for that reason not obligatory upon either of the parties thereto.¹⁰

§ 161. Conveyance of land in adverse possession invalid.—By section 2259 of the Revised Laws of 1910, it is made a misdemeanor for any person to knowingly take a conveyance of lands or tenements or any interest or estate therein from any person not in possession thereof while such lands or tenements are subject to suit or controversy in any court.

By section 2260 of the Revised Laws of 1910, it is made a misdemeanor for any person to buy, sell, or in any manner procure, make, or take any promise or covenant to convey, any pretended right or title to any lands or tenements unless the grantor thereof or the person making such promise or covenant has been in possession, or he and those by whom he claims, have been in possession of the same, or have taken the rents and profits thereof, for the space of a year before such grant, conveyance, sale, or promise.

These statutes are of importance in their application to conditions in that part of the state which formerly constituted the Indian Territory. Not a few persons had, prior to statehood, adopted the course of harassing the grantees of Indian allottees by taking subsequent conveyances for the purpose of clouding previously acquired titles. Such parties usually furnish the Indian with suggested grounds upon which to assail his previous conveyances. The number of cases which have come to the Supreme Court of the state involving this statute disclose the necessity for legislation of this character. It has been held by the Supreme Court of the state that these statutes are but declaratory of the common law, and that a conveyance of land made in contravention thereof by the rightful owner is, as against the person holding adversely, void.¹¹

¹⁰ *Simmons v. Whittington*, 27 Okl. 356, 112 Pac. 1018.

¹¹ *Ruby v. Nunn* (Okl.) 132 Pac. 128; *Huston v. Scott*, 20 Okl.

The court has been repeatedly urged to hold that the real owner of property may convey though the lands be in adverse possession, and that the statute was designed to protect only against conveyances by persons making false claim of ownership. Clearly such an interpretation of the statute would not bring it within the mischief against which it was intended to afford a remedy.

§ 162. **Void conveyances as declared under the Act of May 27, 1908.**—Section 5 of the Act of May 27, 1908, provides that any attempted alienation or incumbrance by deed, mortgage, contract to sell, power of attorney, or other method of incumbering real estate made prior to the approval of said act, affecting the title of lands allotted to members of the Five Civilized Tribes prior to removal of restrictions therefrom, shall be absolutely null and void. This provision was incorporated in the Act of May 27, 1908, removing restrictions undoubtedly as a precaution against any verity being given to conveyances made before the removal of restrictions by the act removing restrictions.

In other words, Congress was careful each time it removed restrictions to insert a prohibition, the purpose of which was to prevent any person who had taken a prohibited conveyance from asserting that it had been made valid by the removal of restrictions upon alienation of the lands conveyed.

The proviso to section 19 of the Act of April 26, 1906, and section 5 of the Act of May 27, 1908, seem designed to accomplish the same purpose and to cover the same field, and it is probable that the Act of May 27, 1908, prescribing a somewhat different rule operated to repeal in this particular the Act of April 26, 1906.

142, 94 Pac. 512, 35 L. R. A. (N. S.) 721; *Powers v. Van Dyke*, 27 Okl. 27, 111 Pac. 939, 36 L. R. A. (N. S.) 96; *Powers v. Van Dyke*, 29 Okl. 398, 117 Pac. 797; *Flesher v. Callahan*, 32 Okl. 283, 122 Pac. 489; *Martin v. Cox*, 31 Okl. 543, 122 Pac. 511; *Johnson v. Myers*, 32 Okl. 421, 122 Pac. 713; *Bell v. Cook* (C. C.) 192 Fed. 597.

CHAPTER 20

APPROVAL OF CONVEYANCES, ETC., BY COURTS AND ADMINISTRATIVE OFFICERS

§ 163. Approval of conveyances—In general.

164. Approval—Power of Secretary over conveyances, etc.

165. Approval of conveyances, leases, wills, etc., by the court.

§ 163. Approval of conveyances—In general.—Substantially all of the allotment agreements and legislation enacted for making the same effective provide for the removal of restrictions on alienation by the Secretary of the Interior, or approval of conveyances, leases, wills, etc., of allotted or inherited lands by the Secretary of the Interior, or the approval of such conveyances, leases, wills, etc., by some court, usually the court exercising probate jurisdiction in the county in which the land is located.

None of these agreements or statutes prescribe any rule, regulation, or procedure for the approval of such conveyances. Such approval, whether by an administrative officer or a court, is an administrative act, and amounts to no more than the consent of the person authorized to approve the making of the conveyance, lease, will, or other instrument involved. The authority to approve gives no authority to initiate, make, or execute a conveyance. The act of approval, whether by an administrative officer or by the court, does not involve the exercise of judicial power, and the order of approval is not an adjudication of the execution of the conveyance, of the payment of the consideration, or that there was no wrong done or fraud perpetrated by the parties thereto in connection therewith.

§ 164. Approval—Power of Secretary over conveyances, etc.—The acts requiring the submission of conveyances, leases, wills, etc., of allotted or inherited allotted Indian lands to the Secretary of the Interior for his approval are too numerous to mention in detail. They are all of the

same general import. Conveyances of land otherwise inalienable may be made upon the approval of the Secretary of the Interior. Some of the statutes contain the further provision that such approvals may be made under such rules and regulations as he may prescribe.

The Secretary of the Interior has, under statutes authorizing him to approve conveyances, whether specifically authorized to do so or not, authority to make such reasonable rules and regulations as may appear to him to be necessary for the protection of the allottees in the execution by him of the terms of the act. Such rules and regulations, not inconsistent with the act, have the force and effect of law.¹ Conveyances of nonalienable land, authorized to be made upon the approval of the Secretary of the Interior, are, when made without his approval, either wholly void or voidable.²

The authority of the Secretary to approve is not destroyed by lapse of time, or even by the death of the grantor.³ Nor is it within the power of one of the parties, who has submitted a duly executed conveyance to the Secretary of the Interior for his approval, to destroy his authority to act thereon by an attempted withdrawal of the conveyance from his consideration.⁴

§ 165. Approval of conveyances, leases, wills, etc., by the court.—By section 9 of the Act of May 27, 1908, no con-

¹ *Caha v. United States*, 152 U. S. 211, 14 Sup. Ct. 513, 38 L. Ed. 415; *United States v. Thurston County, Neb.*, 143 Fed. 287, 74 C. C. A. 425; *Simmons v. Whittington*, 27 Okl. 356, 112 Pac. 1018; *Alameda Oil Co. v. Kelley*, 35 Okl. 525, 130 Pac. 931; *Jennings v. Wood*, 192 Fed. 507, 112 C. C. A. 657; *In re Heirs of Pa-pee-ze-see-wah*, 6 Land Dec. 251; *In re Nancy Whitefeathers*, 26 Land Dec. 25.

² *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

³ *Pickering v. Lomax*, 145 U. S. 310, 12 Sup. Ct. 860, 36 L. Ed. 716; *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *Lykins v. McGrath*, 184 U. S. 169, 22 Sup. Ct. 450, 46 L. Ed. 485; *Alameda Oil Co. v. Kelley*, 35 Okl. 525, 130 Pac. 931; *Ingraham v. Ward*, 56 Kan. 550, 44 Pac. 14.

⁴ *Alameda Oil Co. v. Kelley*, 35 Okl. 525, 130 Pac. 931.

veyance of any interest of any full-blood Indian, of either of the Five Civilized Tribes, is valid unless approved by the court having jurisdiction of the settlement of the estate of the deceased allottee.⁵

This is a congressional grant of administrative authority to the county courts of the state of Oklahoma having territorial jurisdiction to administer the estates of deceased allottees of the Five Civilized Tribes who left surviving them full-blood heirs.

Section 23 of the Act of April 26, 1906, contains a very similar provision with reference to a will of a full-blood Indian disinheriting the parent or spouse. Such will is required, under said act, to be approved by the judge of the United States Court for the Indian Territory, or a United States commissioner, and by section 8 of the Act of May 27, 1908, a judge of the county court of the state of Oklahoma.

No procedure is prescribed for the presentation of conveyances of the character described to the court for its approval. The function being purely an administrative one, and the act of approval not being a judgment of the court, and not operative to divest the party grantor of any rights he may have, it is within the power of the court to adopt any rule of procedure it may deem reasonably effective to fulfill the purpose of the act. The approval is required to be made by the court, and not the judge; but this was no doubt for the purpose of preserving a public record of the papers presented, the proceedings had and the order of approval.

The judge of the court is as fully authorized to prescribe such rules and regulations as he may deem proper for the submission to the court of conveyances for approval under said act as is the Secretary of the Interior under various

⁵ *Harris v. Gale* (C. C.) 188 Fed. 712; *MaHarry v. Eatman*, 29 Okl. 46, 116 Pac. 685; *Mullen v. Short* (Okl.) 132 Pac. 230; *United States v. Knight* (C. C. A.) 206 Fed. 145.

acts conferring upon him authority to approve conveyances of allotted or inherited lands.

The county court exercises jurisdiction to approve solely as a delegated federal administrative power, just as the Secretary exercises the same character of power in making similar approvals. It was as fully within the power of Congress to confer this authority upon a county court as it was upon the Secretary of the Interior, and Congress has left the county court as free and untrammelled as to procedure as it has the Secretary. This was, no doubt, upon the assumption that the authority conferred would be exercised to the accomplishment of that for which it was created, the protection of the incompetent full blood against improvident conveyances.

The procedure should be such that the court may assure itself that the conveyance or lease was duly executed by the party whose name is signed thereto, and that the consideration recited has been paid or secured. Where the approval of a conveyance of inherited land is sought, the petition should set out in detail the facts showing the relation of the grantor to the decedent, from which it can be ascertained whether under the law such grantor takes by inheritance the estate he is seeking to convey.

The personal appearance of the grantor on the presentation of the application is desirable, although not absolutely necessary, and a recital of such appearance in the order of approval tends to show that a full and fair investigation was made of the conditions surrounding the conveyance and the execution thereof and of the payment of the consideration.

CHAPTER 21

CONVEYANCE OF LANDS OF MINORS THROUGH PROBATE PROCEEDINGS IN THE INDIAN TERRITORY

§ 166. Jurisdiction of United States courts in the Indian Territory to appoint guardians and order the sale of the lands of the minor members of the Five Civilized Tribes.

167. Minors—Who were.

168. Appointment of guardian or curator.

169. Sale of real estate of minors for purposes of education.

170. Sale of real estate of minors for investment.

171. Leases of minors' land in Indian Territory.

§ 166. Jurisdiction of United States courts in the Indian Territory to appoint guardians and order the sale of the allotted lands of the minor members of the Five Civilized Tribes.—Section 31 of the Act of May 2, 1890,¹ extended chapter 73 of Mansfield's Digest of the Statutes of Arkansas of 1884, entitled "Guardians, Curators and Wards," over and put the same in force in the Indian Territory. Said section further provided that the United States court for the Indian Territory should appoint guardians and curators under the provisions of said chapter. On the 28th day of April, 1904,² the President approved an act providing for the appointment of additional judges in the Indian Territory, and for other purposes, which provided: "All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation so as to embrace all persons and estates in said territory, whether Indian, freedmen, or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlements of all estates of decedents, the guardianships of minors and incompetents, whether Indians, freedmen, or otherwise." Prior to this time Congress had enacted that after June 28, 1898, the laws of the various tribes or nations of Indians should not

¹ Act May 2, 1890, c. 182, 26 Stat. 81.

² See section 365.

be enforced at law or in equity in the courts of the United States in the Indian Territory. While there can be little doubt of the jurisdiction of the United States courts in the Indian Territory to order the sale of the allotted or inherited lands of a minor member of the Five Civilized Tribes where the same were held free from restrictions upon alienation, prior to April 28, 1904, there can be no doubt about such jurisdiction subsequent to April 28, 1904. Wherever the allotted or inherited lands of a minor member of the tribe were free from restrictions upon alienation, they were subject to sale on order of the United States courts for the Indian Territory in the exercise of their probate jurisdiction to the same extent as were the lands of other minors not members of said tribes.

§ 167. **Minors—Who were.**—Males of the age of 21 years and females of the age of 18 years were of full age for all purposes, and until they attained such ages, respectively, they were minors for all purposes.³ This statute having been put in force in the Indian Territory by act of Congress and continued in force until statehood, it may be treated as a congressional act for the purpose of determining the age of majority of members of the Five Civilized Tribes.

§ 168. **Appointment of guardian or curator.**—The United States court, exercising jurisdiction in the district of the minor's residence, had authority to appoint a guardian for the person, or curator for the estate of such minor.⁴ Applications for the appointment of guardian are required to be by petition, which must be signed, or joined in in some way, by the minor where over 14 years of age, and by the next of kin, or some person in the minor's behalf, where under 14 years of age. Notice to the parent or person next of kin in charge of the minor was necessary to the appoint-

³ Mansf. Dig. Ark. 1884, § 3464.

⁴ *Wortham v. John*, 22 Okl. 562, 98 Pac. 347; *In re Bollin's Estate*, 22 Okl. 851, 98 Pac. 934; *Spade v. Morton*, 28 Okl. 384, 114 Pac. 724; *Huston v. Cobleigh*, 29 Okl. 793, 119 Pac. 416.

ment of a guardian. There are a number of statutory provisions regulating the matter of priority of right, qualification to act as guardian, the giving of bond and approval thereof, which it is not necessary to here discuss. Appointment could be made by the clerk in vacation, but where so made was required to be ratified and confirmed by the court in session. The giving of a bond for the faithful discharge of duties as guardian was a condition precedent to the issuance of letters of guardianship.

§ 169. Sale of real estate of minors for purposes of education.—The probate court is authorized to order the sale of the real estate of a minor, or so much thereof as may be requisite to raise the funds necessary to complete his education. Notwithstanding the statute does not prescribe the method of invoking the jurisdiction of the court to grant an order of sale, application should, no doubt, be made to the court setting forth the facts rendering it necessary that the sale be made to raise funds to complete the education of the minor. Apparently no notice of such application is required to be given or contemplated by the statute. The court is to judge of the necessities from the application and such information as he may demand as a condition precedent to the making of the order. No real estate of a minor shall be sold on the order of the court for less than three-fourths of its appraised value, and the guardian or curator must not be, either directly or indirectly, interested in the purchase of such real estate. The sale of such real estate is required to be advertised and conducted in the manner provided by law for advertising and conducting sales of real estate of deceased persons made by executors and administrators for the payment of debts. Before sale the guardian is required to have the lands appraised by three disinterested householders, who shall make oath that they will truly and according to the best of their abilities view and appraise such lands, and their appraisal thereof must be made out in writing under their hands and

delivered to the guardian and filed with the clerk of the court. No notice is required to be given of the sale. If the bids do not justify a sale, the facts are to be reported to the court, and another sale ordered at the end of twelve months to the highest bidder. If the sale is made, the guardian or curator must report such sale to the court ordering the same for its confirmation. If such sale is approved by the court, it becomes valid to all intents and purposes. If approval is refused, the order of sale is thereupon renewed. The guardian or curator, upon confirmation and receipt of the purchase price, is required to execute and deliver to the purchaser a deed of conveyance referring in apt terms to the order of the court, the advertisement, the appraisement and description of the real estate, the time, place and terms of sale, and the payment of the purchase money. Such recitals are made prima facie evidence of the facts recited. Such deed operates to convey to the purchaser all the right, title and interest of the ward in the real estate sold. Such deed should be executed, acknowledged and recorded as other conveyances of real estate. A sale by a guardian of the real estate of a minor is not completed and does not pass title until confirmed by the court. The procedure under this statute has received very full consideration by the Supreme Court of Oklahoma.⁵

§ 170. Sale of real estate of minors for investment.—The United States courts in the Indian Territory, when it was made to appear that it would be for the benefit of the ward that his real estate or some part thereof be sold and the proceeds put on interest or invested in productive stocks or in other real estate, had the jurisdiction and authority to order the guardian or curator to sell the lands of same. Such order was required to be made by the United States court of the district in which such real estate or the

⁵ *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *Wortham v. John*, 22 Okl. 562, 98 Pac. 347; *In re Bolin's Estate*, 22 Okl. 851, 98 Pac. 934; *Spade v. Morton*, 28 Okl. 384, 114 Pac. 724; *Huston v. Cobleigh*, 29 Okl. 793, 119 Pac. 416.

greater part thereof was situate. To obtain such order the guardian or curator was required to present to the court a petition setting forth the condition of the estate and the facts and circumstances which made it for the benefit of the ward that such real estate be sold and the proceeds put on interest or invested in productive stocks or other real estate. No notice of the application was required to be given, and the court was authorized to make the order if, after full examination on the oath of creditable and disinterested witnesses, it should appear that it would be for the benefit of the ward that such real estate should be sold.

The court is required to direct that the sale be made "under such regulations and conditions, subject to the provisions of this chapter in relation to the sale of real estate of minors, * * * first requiring the guardian or curator to enter into good and sufficient bonds to make * * * such sale * * * with fidelity to the interest of his ward, and faithfully to account for the proceeds. * * *" Does this section require a compliance with all of the requirements for the sale of real estate for the education of minors, or does it require a compliance with only the specific requirements of sections 3504 to 3506, inclusive, of Mansfield's Digest of the Statutes of Arkansas of 1884? It is probably necessary to comply only with the last-mentioned sections. This seems to be clearly indicated in a decision of the Supreme Court of the state, although it was finally announced that it was not deemed necessary to pass upon the question. While confirmation is necessary to the validity of such sale, such confirmation may result, not only from a specific order of confirmation, but by other orders of the court recognizing the sale and providing for the handling, investment, or distribution of the funds.

The Supreme Court of Arkansas, prior to the extension of these statutes over the Indian Territory, had uniformly held that failure to comply with statutory directions in the

matter of the sale of the real estate of a decedent, or of a minor, did not render such sale void or subject to collateral attack. A confirmation cured all mere errors.⁶

§ 171. **Leases of minors' land in Indian Territory.**—Leases of the real estate of a minor could be made for the purpose of securing funds to educate the minor, or for the purpose of putting the proceeds of such lease out at interest or investing the same in productive stocks or in other real estate. In each instance the leases are required to be made in the same manner as the sale of real estate of a minor for the purpose of education and for the purpose of putting the same out at interest, investing in productive stocks or other real estate, respectively. The United States courts in the Indian Territory had jurisdiction and authority under these statutes to authorize the leasing of the lands of a minor by his guardian for a term extending beyond the term of guardianship and of the arriving of the minor at the age of majority.⁷ Such authority extended, under the Act of April 26, 1906, to the authorization of the guardian to make an oil and gas lease, and the approval of the Secretary of the Interior was not necessary to the validity of the same.⁸

Under section 3498 of Mansfield's Digest of the Statutes of Arkansas, in force in the Indian Territory, rental contracts or leases of the lands of a minor had to be sold to the highest bidder giving ten days' previous public notice of the time and place of such sale.⁹

⁶ See authorities cited under preceding section. * * * Also, *Borden v. State*, 11 Ark. 519, 44 Am. Dec. 217; *Ex parte Marr*, 12 Ark. 88; *Rogers v. Wilson*, 13 Ark. 507; *Bennett v. Owen*, 13 Ark. 177; *Montgomery v. Johnson*, 31 Ark. 74; *Beldler v. Friedell*, 44 Ark. 411; *Apel v. Kelsey*, 47 Ark. 413, 2 S. W. 102; *Apel v. Kelsey*, 52 Ark. 341, 12 S. W. 703, 20 Am. St. Rep. 183; *Alexander v. Hardin*, 54 Ark. 480, 16 S. W. 264.

⁷ *Spade v. Morton*, 28 Okl. 384, 114 Pac. 724; *Huston v. Cobleigh*, 29 Okl. 793, 119 Pac. 416.

⁸ *Morrison v. Burnette*, 154 Fed. 617, 83 C. C. A. 391.

⁹ *Huston v. Cobleigh*, 29 Okl. 793, 119 Pac. 416.

CHAPTER 22

CONVEYANCE OF LANDS OF MINORS UPON ORDER OF COUNTY COURTS OF THE STATE OF OKLAHOMA

- § 172. County courts of the State of Oklahoma successors to the county courts of the Territory of Oklahoma and the United States courts in the Indian Territory.
- 173. Distribution of probate jurisdiction.
- 174. The Act of May 27, 1908, relating to the exercise of probate jurisdiction.
- 175. County courts in the exercise of probate authority are courts of general jurisdiction.
- 176. Probate Code—History of.
- 177. Minors—Who are.
- 178. Appointment of guardians for minors.
- 179. Appointment of guardians for incompetent and insane persons.
- 180. Bond of guardian.
- 181. Partition of real estate.
- 182. Sale of real estate of a minor—When authorized by statute.
- 183. Necessary steps in proceedings to sell.
- 184. Petition for sale of the real estate of a minor.
- 185. Hearing and order to show cause.
- 186. Service of notice of hearing on order to show cause prior to June 17, 1910.
- 187. Service of notice of hearing of order to show cause subsequent to June 17, 1910.
- 188. Statutory provisions relating to sale of real estate of decedent to control where not otherwise provided.
- 189. Order of sale.
- 190. Notice of sale prior to June 17, 1910.
- 191. Notice of sale subsequent to June 17, 1910.
- 192. Time and place of sale.
- 193. The real estate of a minor may, upon order of the county court, be sold by his guardian at private sale.
- 194. Proof of service.
- 195. Return of sale and proceedings thereon prior to June 17, 1910.
- 196. Return of sale subsequent to June 17, 1910, and proceedings in confirmation thereof.
- 197. Limitation on time of sale.
- 198. Conveyance by guardians.
- 199. Sales for railroad purposes.
- 200. Minors—Mortgage of estates.
- 201. Oil and gas leases.
- 202. Oil and gas—Leases for—Of lands of minors under Act of May 27, 1908.
- 203. Collateral attack on sale.
- 204. Guardianship, how terminated.

§ 172. County courts of the state of Oklahoma successors to the county courts of the territory of Oklahoma and the United States courts in the Indian Territory.—Under the terms of the Enabling Act and the acceptance thereof in the Constitution of the state of Oklahoma, the statutes of the territory of Oklahoma relating to probate jurisdiction and procedure, except where modified by the Constitution, were extended over and made applicable to the state of Oklahoma and the county courts of the state of Oklahoma became the successors of the county courts of the territory of Oklahoma as to their probate jurisdiction and the successors to the United States courts in the Indian Territory as to probate cases pending therein.¹ The statutes of the territory of Oklahoma, as extended over the state of Oklahoma, authorized the sale, upon order of the county courts, of the lands of minor Indians, except where prohibited or limited by federal legislation. Wherever restrictions upon alienation existed the lands were not subject to sale by order of the county courts. Where the restrictions upon alienation had been removed, or expired, or ceased to exist for any other reason, the lands of the minor became subject to sale and disposition through the county courts of the state of Oklahoma, in the exercise of their probate jurisdiction.

§ 173. Distribution of probate jurisdiction.—Section 19 of the Enabling Act provides that the courts of original jurisdiction of such state shall be deemed to be the successor of all courts of original jurisdiction of such territories, and as such shall take and retain the custody of all records, books, journals and files of such courts, except in cases transferred therefrom as therein provided. Section 3 of the Act of March 4, 1907 (34 Stat. 1287, c. 2911), amending the Enabling Act, provides that “all causes, proceedings, and mat-

¹ *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *MaHarry v. Eatman*, 29 Okl. 46, 116 Pac. 935; *Henry Gas Co. v. United States*, 191 Fed. 132, 111 C. C. A. 612.

ters, civil or criminal, pending in the district courts of Oklahoma Territory, or in the United States courts in the Indian Territory, at the time said territories become a state, not transferred to the United States Circuit or District Courts in the state of Oklahoma, shall be proceeded with, held, and determined by the courts of said state, the successors of said district courts of the territory of Oklahoma, and the United States courts in the Indian Territory."

Section 23 of the schedule to the Oklahoma Constitution provides: "When this Constitution shall go into effect, the books, records, papers, and proceedings of the probate court in each county, and all causes and matters of administration and guardianship, and other matters pending therein, shall be transferred to the county court of such county, except of Day county, which shall be transferred to the county court of Ellis county, and the county courts of the respective counties shall proceed to final decree or judgment, order, or other termination in the said several matters and causes as the said probate court might have done if this Constitution had not been adopted. The district court of any county, the successor of the United States court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, shall transfer to the county court of such county, all matters, proceedings, records, books, papers, and documents appertaining to all causes or proceedings relating to estates: Provided, that the Legislature may provide for the transfer of any of said matters and causes to another county than herein prescribed."

By section 12, art. 7, of the Constitution, original and exclusive jurisdiction in probate matters is conferred upon the county courts. It is therefore the duty of any district court in that part of the state carved out of the Indian Territory to transmit all matters, proceedings, records, and books, pertaining to all causes or proceedings relating to estates, that came to it from the United States courts in the Indian Territory, to the county court of the county in which the United States court where such proceedings were

pending had been located; the distribution of such causes, matters, and proceedings to be made to other counties in which they would have been instituted under the law if statehood had been in existence at the time of their institution, as the Legislature might direct. Pursuant to the constitutional provision, the Legislature of Oklahoma enacted a law for the distribution of causes to the various county courts, and such law was subsequently amended to provide, in substance, that any matter or proceeding, including probate matters, might, on petition of any person having a substantial interest therein, filed within sixty days after the approval of the act, be transferred to the court of the county or district in which the same would have been properly instituted or triable had such suit or proceeding been commenced after the admission of the state into the Union. It was held, in interpreting this statute, that it did not oust the court in which a probate proceeding was pending, and which was subject to transfer under said act upon application, of jurisdiction to proceed therewith in the absence of an application properly presented. It was further held that the limitation of sixty days contained in said act was directory and not mandatory, and jurisdiction to transfer such proceedings was not lost because the application for such transfer or the order transferring the same was made subsequent to the expiration of the sixty days therein provided. In other words, the county court to which the probate proceedings were first transferred had the right to proceed with the exercise of full and complete probate jurisdiction until such time as the cause was transferred on proper application to the county court of the county in which the proceeding would have been instituted if statehood had existed at the time of its institution.²

² *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *MaHarry v. Eatman*, 29 Okl. 46, 116 Pac. 935; *Davis v. Caruthers*, 22 Okl. 323, 97 Pac. 581; *Burnett v. Durant*, 28 Okl. 552, 115 Pac. 273; *Henry Gas Co. v. United States*, 191 Fed. 132, 111 C. C. A. 612.

§ 174. The Act of May 27, 1908, relating to the exercise of probate jurisdiction.—Section 6 of the Act of May 27, 1908, provides: "That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the state of Oklahoma." This provision is a very broad and comprehensive one, and there is no other provision of any federal statute remaining in force in the state of Oklahoma vesting jurisdiction over the persons or estates of minor Indians located within the state of Oklahoma in any court or tribunal other than the county courts, and the judges thereof, of the various counties of the state of Oklahoma. It is true that in certain cases the approval of conveyances made through the probate court must be had by the Secretary of the Interior before such conveyances become effective. This is true, however, only as to those cases in which there are positive statutory provisions requiring such approval, and the exercise by the county court of its probate jurisdiction is, in most cases, a necessary step in the perfecting of the conveyance, lease, or other matter, requiring the Secretary's approval. A very similar provision is found in section 3 of the Act of April 18, 1912 (37 Stat. 86, c. 83) relating to the Osages.

§ 175. County courts in the exercise of probate authority are courts of general jurisdiction.—Jurisdiction of the estates of minors and decedents is usually termed "probate jurisdiction." In the state of Oklahoma probate jurisdiction is vested in the county courts, and the judges thereof, by the Constitution. Such courts, coextensive with the county, have original jurisdiction in all probate matters, but may not order or decree the partition or sale of real estate not arising under their probate jurisdiction. Such courts have the general jurisdiction of a probate court and are authorized to probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, to grant letters testamentary and of admin-

istration, to settle the accounts of executors and administrators and guardians and transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the sale, settlement, partition and distribution of the estates thereof. Therefore, under the Constitution, while county courts are, as to the enforcement of criminal statutes, and the trial of civil litigated matters, courts of limited jurisdiction, they are as to probate matters courts of general jurisdiction, standing substantially in the same relation to probate jurisdiction as the district courts do to civil and criminal jurisdiction. Possibly county courts, as to probate matters, are courts of general jurisdiction in a broader sense than are the district courts, because exclusive probate jurisdiction is conferred upon the county courts, while the Legislature reserves the right to modify the jurisdiction of all courts in civil and criminal matters, except the county courts as to probate jurisdiction. It may be said that the county courts of the state of Oklahoma are, in the exercise of probate jurisdiction, courts of general jurisdiction in the most liberal sense.³ Much of the uncertainty as to the conclusive effect of the proceedings and judgments of courts exercising probate jurisdiction has arisen because of the fact that such courts were originally of a very limited jurisdiction, even as to the estates of minors, incompetents and decedents, committed to their care. Judicial expression and judicial dictum in relation to probate jurisdiction have hardly kept pace with the legislation broadening such jurisdiction and the authority of the courts exercising the same. The tendency has been to cite and follow the earlier cases where such courts were acting under statutes conferring limited jurisdiction, rather than to take proper cognizance of the enlarged jurisdiction of such courts. This distinction is most vital perhaps when deal-

³ Constitution and Enabling Act of Oklahoma annotated (Williams) § 198; *Magee v. Big Bend Land Co.*, 51 Wash. 406, 99 Pac. 16; *Christianson v. King County* (C. C. A.) 203 Fed. 894.

ing with the jurisdiction of probate courts where their proceedings are collaterally assailed. There has been a disposition in some jurisdictions, sometimes warranted by the limited authority conferred, and at other times not, to materially impair the conclusive effect of probate proceedings by the assumption that in courts of such limited jurisdiction the record must furnish complete evidence of a compliance with every statutory provision before the judgments of such courts will be recognized as *res judicata*. If such a rule is justified by statutory limitations upon probate jurisdiction in other states, it is not so in the state of Oklahoma. The same presumption of good faith and the rightful exercise of jurisdiction should be accorded the proceedings, orders, and judgments of the county courts in the exercise of probate jurisdiction as is accorded to the orders, judgments, and decrees of the district courts of the state. The statement contained in the opinion of the Supreme Court of the state ⁴ that the jurisdiction in probate matters of the United States courts in the Indian Territory was limited and special, could not well have application to the constitutional probate courts of Oklahoma.

§ 176. **Probate Code—History of.**—The Probate Code of the state of Oklahoma was taken from, and is a substantial literal re-enactment of, the Probate Code of Dakota of 1887. It was adopted December 25, 1890, and was carried into the compilation of the Statutes of 1890 and of 1893 and Wilson's Statutes of 1903 without change, and into the Compiled Laws of 1909 with such modifications as were effected by the Constitution of the state and of the change from territorial form of government to state government. Minor modifications were made during the first session of the Legislature following statehood, but none materially affecting the procedure for the appointment of a guardian, or his management, control, and disposition of the estate of the minor. In 1910 a number of

⁴ In *re Bolln's Estate*, 22 Okl. 851, 98 Pac. 934.

changes were made, particularly with reference to the procedure upon application for letters of administration, notice to creditors and personal claims, proof of service of notice, notice of order to show cause upon sale of real estate and waiver thereof, waiver by persons interested, notice of sale, notice of final settlement of account, prescribing procedure for sale where lands not divisible, notice of sale of real estate under guardianship proceedings and waiver thereof, and the provision for the ascertainment and adjudication of the heirship of decedents. The amendments effected by these provisions are found in the Revised Laws of 1910.⁵ The rules of procedure prescribed by these amendments differ materially in the particular matters affected from the rules prescribed in previous statutes. These amendments to the probate procedure were enacted at an extraordinary session of the Legislature begun on the 20th day of January, 1910, and ending on the 19th day of March, 1910. The act containing such amendments not containing an emergency clause they became effective ninety days after the 19th day of March, 1910.

The Oklahoma Probate Code is but an adoption and extension of the Dakota statutes over the territory of Oklahoma, and the Dakota Code was but an adoption and extension of the California statutes, with very slight modifications, over the territory of Dakota. The California Code is the basis, not only of the Dakota and Oklahoma Codes, but also of Arizona, Idaho, Montana, Utah, Wyoming, and Nevada, and perhaps some other states. Many of the provisions of the Probate Codes of these states are identical with those of Oklahoma. Some differ but slightly, and others materially. The California Probate Code has been frequently amended and a number of times in its most important provisions.

⁵ The probate statutes as amended by the Act of 1910 are found in the following sections of the Revised Laws of 1910: 6251, 6252, 6336, 6337, 6374, 6375, 6381, 6440, 6475, 6559.

§ 177. **Minors—Who are.**—The statutes in force in the territory of Oklahoma at the incoming of statehood, and extended over and made applicable to the state of Oklahoma by the Enabling Act, declared males under twenty-one years of age and females under eighteen years of age to be minors. Under the Oklahoma territorial statutes marriage conferred authority upon a minor, regardless of his age, to hold, mortgage, convey, or make any contract relating to real estate or any interest therein. By an act of the Legislature, effective June 5, 1909 (Laws 1909, c. 13), the right of a married minor to convey real estate was limited to that acquired after marriage. On May 27, 1908, Congress declared that the probate courts of the state of Oklahoma should have jurisdiction over the lands of the minor members of the various Indian tribes, and that the term "minor" or "minors," as used in said act, should include all males under the age of 21 years and all females under the age of 18 years. This statute undoubtedly determines the age of majority for all purposes from the date it became effective, May 27, 1908. It is also probable that the Oklahoma statute conferring upon married minors the privilege of conveying their real estate was never applicable to members of the Five Civilized Tribes of Indians as to their allotted or inherited lands. The term "minor" or "minors" therefore includes, as applied to members of the Five Civilized Tribes, males under the age of 21 years and females under the age of 18 years, and marriage neither terminates the guardianship as to the lands of a minor nor is it a bar to the appointment of a guardian.⁶

§ 178. **Appointment of guardians for minors.**—County courts are authorized,⁷ where it is necessary or convenient,

⁶ Bell v. Cook (C. C.) 192 Fed. 597; Jefferson v. Winkler, 26 Okl. 653, 110 Pac. 755; Stevens v. Elliott, 30 Okl. 41, 118 Pac. 407; Kirkpatrick v. Burgess, 29 Okl. 121, 116 Pac. 764; Yarbrough v. Spalding, 31 Okl. 806, 123 Pac. 843; Chapman v. Siler, 30 Okl. 714, 120 Pac. 608; Gill v. Haggerty, 32 Okl. 407, 122 Pac. 641; Grissom v. Beidleman, 35 Okl. 343, 129 Pac. 853; Priddy v. Thompson (C. C. A.) 204 Fed. 955.

⁷ Rev. Laws 1910, § 6522.

to appoint guardians for the persons and estates, or either or both of them, of minors who have no guardian legally appointed by will or deed, and who are residents of the county, or who reside without the state and have an estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of the minor. The judge is required, before making an appointment, to cause such notice as he deems reasonable to be given to the relatives of the minor residing in the county, and to any person having the care and custody of such minor.⁸

The minor must be without a guardian, must be a resident of the county,⁹ or own property therein and be a non-resident of the state. The character and length of the notice of the application for the appointment is left to the discretion of the judge, but notice of some character must be given to relatives of the minor residing in the county, and to the person having the care of such minor, whether a relative or not.¹⁰ If the minor be under the age of fourteen years the probate judge may select the guardian; if over the age of fourteen years he may nominate his own guardian, subject to the approval of the court. The statute, however, does not mean that the probate judge may, without notice to, or in disregard of, the wishes of the parent or natural guardian, nominate and appoint such person as he may see fit. Care should be exercised to see that the statute is complied with in invoking the jurisdiction of the court to appoint a guardian. If such appointment is

⁸ *Wortham v. John*, 22 Okl. 562, 98 Pac. 347; *Fox v. Minor*, 32 Cal. 111, 91 Am. Dec. 566; *Burroughs v. De Couts*, 70 Cal. 361, 11 Pac. 734; *Estate of Hathaway*, 111 Cal. 270, 43 Pac. 754; *In re Lewis*, 137 Cal. 682, 70 Pac. 926; *In re Elkerenkotter's Estate*, 126 Cal. 54, 58 Pac. 370; *Ex parte Miller*, 109 Cal. 643, 42 Pac. 428; *Murphy v. Superior Court*, 84 Cal. 592, 24 Pac. 310.

⁹ *Guardianship of Raynor*, 74 Cal. 421, 16 Pac. 229; *In re Taylor's Estate*, 131 Cal. 180, 63 Pac. 345; *De la Montanya v. De la Montanya*, 112 Cal. 131, 44 Pac. 354; *Guardianship of Danneker*, 67 Cal. 643, 8 Pac. 514.

¹⁰ *Whyler v. Van Tiger (Cal.)* 14 Pac. 846; *Gronfier v. Puymirol*, 19 Cal. 629; *Asher v. Yorba*, 125 Cal. 513, 58 Pac. 137; *In re Lundberg*, 143 Cal. 402, 77 Pac. 156; *In re Chin Mee Ho*, 140 Cal. 263, 73 Pac. 1002.

made wholly without jurisdiction, *and the record so discloses*¹¹ the proceedings resting thereon, including the sale of the lands of the minor, are void.

§ 179. **Appointment of guardians for incompetent and insane persons.**—A guardian may be appointed by the county court for an incompetent or insane person, resident of the county. Upon the filing of a verified petition by any relative or friend alleging that the person is insane, or from any cause mentally incompetent to manage his property, the judge of the court must cause notice¹² to be given to the supposed insane or incompetent person of a time and place of hearing the application, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing.¹³ If, on examination of such petition and full hearing, it appears to the judge that the person in question is incapable of taking care of himself and managing his property, the court must appoint a guardian of his person and estate, with the powers and duties of a guardian of a minor.¹⁴

The two sections mentioned were in the original Probate Code as adopted in 1890, and have appeared in the article entitled "Guardian and Ward" in each successive authorized edition of the laws of the state. They appear in article 14 of chapter 64, Revised Laws of 1910, entitled "Guardian and Ward."

It was no doubt the purpose to make the jurisdiction, powers and authority of a guardian for insane and incompetent persons identical with the power and authority given him in dealing with the estate of minors.

§ 180. **Bond of guardian.**—The statute requires¹⁵ that before an order appointing a guardian becomes effective,

¹¹ In re Elkerenkotter's Estate, 126 Cal. 54, 58 Pac. 370.

¹² In re Lambert, 134 Cal. 626, 66 Pac. 851, 55 L. R. A. 856, 86 Am. St. Rep. 296; In re Sullivan, 143 Cal. 462, 77 Pac. 153; McGee v. Hayes, 127 Cal. 336, 59 Pac. 767, 78 Am. St. Rep. 57.

¹³ Rev. Laws 1910, § 6538.

¹⁴ Rev. Laws 1910, § 6539.

¹⁵ Rev. Laws 1910, § 6532.

and before letters shall issue, the judge must require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, in such amount as he shall order, conditioned that the guardian will faithfully execute the duties of his trust. The statute also prescribes other conditions of the bond. The execution and approval of the bond, though apparently a jurisdictional prerequisite to the effectiveness of the letters, has been held not to be so.¹⁶ In a prior case the same court had held that the giving of a bond was a condition precedent to the issuance of such letters.¹⁷ No proceeding should be had in a guardianship matter until it has been first ascertained that the bond required by the statute has been given and approved and the oath executed and filed. The statute also requires that every guardian authorized to sell real estate must, before selling the same, give bond to the judge of the county court, with sufficient sureties, to be approved by such judge, conditioned that he will sell the same as ordered and account for the proceeds of the sale. The failure to give such a bond would perhaps not invalidate the title of a purchaser at such sale in good faith and without notice of such defect in the proceedings, but notwithstanding this may be true the statutory provision should be complied with.¹⁸

§ 181. **Partition of real estate.**—Under the revision of the statutes of 1910¹⁹ the guardian may join in and assent to a partition of the real estate of the ward with the written approval of the county judge whenever such assent may be given by any person. Prior to the revision of 1910 the guardian could join in and assent to a partition of the real estate of a ward whenever such assent could be given by any person, and without the approval of the probate court.

¹⁶ In re Chin Mee Ho, 140 Cal. 263, 73 Pac. 1004.

¹⁷ Murphy v. Superior Court, 84 Cal. 592, 24 Pac. 311.

¹⁸ Smith v. Biscailuz, 83 Cal. 344, 21 Pac. 15, 23 Pac. 314.

¹⁹ Rev. Laws 1910, § 6546.

The requirement found in the revision of 1910 that the guardian must secure the written approval of the county judge before assenting to a partition brings the Oklahoma statute in line with those of other states, which usually require such approval as a condition precedent to the guardian's assent to the partition of the estate of the minor.²⁰

§ 182. **Sale of the real estate of a minor—When authorized by statute.**—The sale of the real estate of a minor is authorized: (1) When the income of the estate under guardianship is not sufficient to maintain the ward and his family, or to maintain and educate the ward, when a minor,²¹ (2) when it appears to the satisfaction of the court, upon the petition of the guardian, that it is for the benefit of his ward that his real estate or some part thereof should be sold and the proceeds put out at interest or invested in some productive stock, or in the improvement or security of any other real estate of the ward.²² Such sale can be made for either of such purposes upon obtaining an order of the probate court therefor.²³ The Dakota statute reads: "When the income of an estate under guardianship is insufficient to maintain the ward," etc. In the transplanting of the statute from Dakota to Oklahoma the syllable "in" was omitted, and prior to the revision of 1910 the Oklahoma statute read: "When the income of an estate under guardianship is sufficient to maintain the ward," etc. The revision inserts the syllable "in" before the word "sufficient." The dropping of the syllable "in" in the extension of the Dakota Code over the territory of Oklahoma was clearly a technical error. The provision as it existed

²⁰ *San Fernando Farm Homestead Ass'n v. Porter*, 58 Cal. 81; *Richardson v. Loupe*, 80 Cal. 490, 22 Pac. 227; *Kromer v. Friday*, 10 Wash. 621, 39 Pac. 229, 32 L. R. A. 671.

²¹ Rev. Laws 1910, § 6542.

²² Rev. Laws 1910, § 6554.

²³ *Fitch v. Miller*, 20 Cal. 352; *Smith v. Biscalluz*, 83 Cal. 344, 21 Pac. 15, 23 Pac. 314; *Dennis v. Winter*, 63 Cal. 16; *Asher v. Yorba*, 125 Cal. 513, 58 Pac. 137; *Brenham v. Davidson*, 51 Cal. 352.

prior to the revision of 1910 should be considered, because of the manifest error, as though it had been in the form in which it appears in the revision.

§ 183. Necessary steps in proceedings to sell.—To avoid overlooking a compliance with any of the statutory provisions authorizing or regulating the sale of the real estate of a minor by order of a county court, it perhaps is advisable to enumerate the various steps required to be taken in the order fixed in the statute. The following action should be taken and the following proceedings had:

1. There should be filed a petition for an order of sale.
2. A hearing should be had and an order procured, directing the next of kin of the minor and all persons interested in the land, to appear and show cause why the order should not be granted as prayed for.
3. There should be service of the order to show cause as required by the statute.
4. Proof of service of the notice of application for the order to sell should be made by affidavit, filed on or before the day on which the hearing is to be had.
5. There should be a full and complete hearing on the petition for the order to sell.
6. An order of sale should be entered, complying with the statutory provisions.
7. A special bond should be filed and approved in such sum as may be ordered by the court.
8. Notice of the sale of the real estate should be given as required by the statute.
9. Proof of the giving of the notices as required by the statute to be filed with the return on the sale.
10. The sale should be made at the time and place prescribed in the order, and of which notice is given, and if there is a postponement of the sale notice of such postponement should be given as required by statute.
11. A return should be made of the sale on or before the

first day of the next term of the court succeeding the day on which the sale is made.

12. Hearing should be had upon such return, and if such hearing is on the first day of the succeeding term no notice is necessary.

13. If the hearing upon the return be not had upon the first day of the next succeeding term, an order should be entered fixing the date of such hearing and requiring notice to be given thereof.

14. Notice should be given as required by the statute of the hearing on the return.

15. Proof of service of the notice should be procured and filed prior to the day of the hearing.

16. An order of confirmation should be duly entered, and the court should find in said order a compliance with all of the statutory provisions authorizing the sale of the real estate of a minor and regulating the proceedings thereon.

17. The order of confirmation should be recorded as required by the statute.

18. A deed should be executed by the guardian, conveying the interest of the minor to the purchaser at the sale.

If a private sale is desired, the following additional statutory provisions must be complied with:

a. The petition must pray an order authorizing a private sale.

b. The order must authorize a private sale.

c. There must be an appraisement of the real estate ordered sold.

d. Notice must be given of the sale as required by statute.

e. There must be proof of service of the notice as required by the statute, before the sale is presented for confirmation.

f. Confirmation cannot be had unless ninety per cent. of the appraised value is bid.

§ 184. **Petition for sale of the real estate of a minor.**—The averments necessary to be included in a petition for the sale of the real estate of a minor are fixed by statute.²⁴ There is a substantial variance in the statutory requirements in the different jurisdictions. In Oklahoma, and states having similar statutes, the jurisdiction of the courts to order the sale is invoked by filing a petition in the court in which the guardianship proceeding is pending. Under the statute the petition to sell should contain an accurate description of the land, one or more of the statutory grounds authorizing or permitting the sale of such real estate and such a showing as to the condition of the estate as to render it necessary or advisable that the court make the order.²⁵ The petition should also, though it is not jurisdictional, set forth the names of the next of kin and of all persons interested in the estate, and, if a private sale is desired, the reasons therefor, and a prayer that the same be ordered. The petition must be verified. In other words, the petition must set forth the condition of the estate and the facts and circumstances on which the application is based, showing the necessity for or expediency of ordering such sale.

A proceeding to sell the real estate of a minor, under the Oklahoma statutes, for his support, maintenance and education, or for investment, is in no sense adverse to the minor. It is a proceeding by the minor through the guardian for his benefit.²⁶ This being true, and the juris-

²⁴ Rev. Laws 1910, § 6557.

²⁵ *Fitch v. Miller*, 20 Cal. 352; *Smith v. Biscailuz*, 83 Cal. 344, 21 Pac. 15, 23 Pac. 314; *In re Hamilton's Estate*, 120 Cal. 421, 52 Pac. 708; *Scarf v. Aldrich*, 97 Cal. 360, 32 Pac. 324, 33 Am. St. Rep. 190; *In re Boland's Estate*, 55 Cal. 310; *Richardson v. Butler*, 82 Cal. 174, 23 Pac. 9, 16 Am. St. Rep. 101; *Gager v. Henry*, 5 Sawy. 237, 9 Fed. Cas. 1041; *Howard v. Bryan*, 133 Cal. 257, 65 Pac. 462; *Walker v. Goldsmith*, 14 Or. 125, 12 Pac. 537.

²⁶ *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *Grignon v. Astor*, 2

diction of the court being properly invoked by the filing of a petition containing the necessary averments, subsequent irregularities do not destroy the jurisdiction thus vested, or affect the validity of a title passing under a duly confirmed sale.

A petition for an order to sell the real estate of a minor to pay debts may, at first appearance, seem to be a proceeding adverse to the minor; but inasmuch as it is a voluntary one, prosecuted by the ward, upon application of his guardian, there is little justification for holding that it is an adversary proceeding.

The averments in the petition for sale should be liberally construed for the protection of the bona fide purchaser at a sale made pursuant thereto. Technical defects in the petition should not avail to defeat a title thus acquired.

§ 185. Hearing and order to show cause.—If upon hearing it appear to the court, or judge, from the petition that it is necessary, or would be beneficial to the ward, that the real estate, or some part thereof, should be sold, the judge must make an order directing the next of kin of the ward and all persons interested in the estate to appear before the court at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, unless such notice is waived, to show cause why an order should not be granted for the sale of such estate.²⁷ The statute does not contemplate a further investigation at this time than an examination of the petition to ascertain whether it appears therefrom

How. 319, 11 L. Ed. 283; *Mohr v. Manierre*, 10 U. S. 417, 25 L. Ed. 1052; *Thaw v. Falls*, 136 U. S. 548, 10 Sup. Ct 1037, 34 L. Ed. 531; *Fleming v. Johnson*, 26 Ark. 421; *Gwynn v. McCauley*, 32 Ark. 97; *Currie v. Franklin*, 51 Ark. 338, 11 S. W. 477; *Beldler v. Friedell*, 44 Ark. 411; *Blackman v. Mulhall*, 19 S. D. 534, 104 N. W. 250; *Perkins v. Gridley*, 50 Cal. 97; *Scarf v. Aldrich*, 97 Cal. 360, 32 Pac. 324, 33 Am. St. Rep. 190; *Zilmer v. Gerichten*, 111 Cal. 73, 43 Pac. 408; *Bradford v. Larkin*, 57 Kan. 90, 45 Pac. 69; *Mortgage Trust Co. of Pennsylvania v. Redd*, 38 Colo. 458, 88 Pac. 476, 8 L. R. A. (N. S.) 1215, 120 Am. St. Rep. 132.

²⁷ Rev. Laws 1910, § 6558.

that the necessary jurisdictional facts are alleged and that it would be beneficial to the ward that the real estate, or some part thereof, be sold. Prior to the 17th day of June, 1910, there was no provision for the waiver of the notice required by this statute. There does not, however, seem to be any reason why such notice might not, in the absence of a statute, have been waived.

§ 186. **Service of notice of hearing on order to show cause prior to June 17, 1910.**—The persons required to be notified and the method of giving the notice prescribed in the following section applies subsequent to June 17, 1910. Prior to that date the statute required a copy of the order to show cause against the sale of the real estate of a minor to be personally served on the next of kin of the ward, and all persons interested in the estate, at least fourteen days before the hearing of the petition, or to be published at least three successive weeks in a newspaper printed in the county, and if there be no newspaper printed in the county then in such newspaper as may be specified in the order to show cause.²⁸ The consent in writing of all persons interested in the real estate, and the next of kin, constituted a waiver of the necessity of service of any character and the order might be made upon such waiver immediately, without the service of notice of any character.²⁹

It will be observed that the notice is required to be served upon the next of kin, and all persons interested in the estate. The time fixed in the notice must not be less than four nor more than eight weeks from the making of the order. The notice may be served either personally or by publication. If service is personal it must be completed not less than fourteen days before the hearing, and if by publication it must be published at least three successive weeks before the hearing.

²⁸ Comp. Laws 1909, § 5504.

²⁹ *Scarf v. Aldrich*, 97 Cal. 360, 32 Pac. 824, 33 Am. St. Rep. 190; *Conklin v. La Dow*, 33 Or. 354, 54 Pac. 218; *Mortgage Trust Co. of Pennsylvania v. Redd*, 38 Colo. 458, 88 Pac. 473, 8 L. R. A. (N. S.) 1215, 120 Am. St. Rep. 132.

The proceeding to sell not being adverse to the minor, notice of hearing is not jurisdictional. The minor is in court by the petition of his guardian, and by such petition the property is submitted to the jurisdiction of the court.⁸⁰

§ 187. **Service of notice of hearing of order to show cause subsequent to June 17, 1910.**—The statute⁸¹ requires the county judge to cause copies of the order to show cause to be posted in three public places in the county, one of which shall be at the court house door where said hearing is to be held, and to be personally served on the next of kin of the ward, and all other persons interested in the estate of the ward, residing in the county, and to be mailed to all such persons who are nonresidents of the county, with the postage prepaid, at least fourteen days before the hearing on the petition. If the post office of any person required to be served with notice of the order is unknown, a copy of the order must be published for two consecutive weeks in some newspaper published in the county, and the hearing on the petition shall not be less than fourteen days from the date of the first publication of such notice. The statute, however, provides that if written consent to the order making the sale is subscribed by all persons interested therein, and the next of kin, hearing may be had at once and without giving the notice above required.⁸²

To what extent the notice required to be given is jurisdictional has been the source of no little controversy. The cases, with few exceptions, hold that the jurisdiction of the court is invoked by filing a petition containing proper averments, and that the proceeding is one by and not against

⁸⁰ *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *Scarf v. Aldrich*, 97 Cal. 360, 32 Pac. 824, 33 Am. St. Rep. 190; *Mulford v. Beveridge*, 78 Ill. 455; *Mohr v. Porter*, 51 Wis. 487, 8 N. W. 364; *Grignon v. Astor*, 2 How. 319, 11 L. Ed. 283; *Mohr v. Manierre*, 101 U. S. 417, 25 L. Ed. 1052; *Thaw v. Falls*, 136 U. S. 548, 10 Sup. Ct. 1037, 34 L. Ed. 531.

⁸¹ Rev. Laws 1910, § 6559.

⁸² See authorities cited under preceding section.

the minor, and is not adverse so far as the next of kin are concerned. Even though adverse as to the next of kin, they having no property interest in the estate of the minor, a failure to give notice to them should not be held to affect the jurisdiction of the court. The proceedings being instituted and prosecuted by the minor, neither he, his guardian, nor his successors in interest should be permitted to deny the jurisdiction of the court because of defects in proceedings which are essentially his own. A careful examination of the cases and of the reasons urged for each of the views inevitably leads to the conclusion that the decisions holding the doctrine that proceedings to sell the real estate of a minor, by his guardian, are not adversary proceedings, are better founded in reason and supported by authority than those taking the opposite position. If any person not notified of the proceeding should be the owner of an interest in such real estate, either in possession or in reversion at the time of the making of such order, the same would be ineffectual as against him.*

§ 188. Statutory provisions relating to sale of real estate of decedent to control where not otherwise provided.—The Oklahoma statutes provide a definite and independent procedure for the sale of the real estate of minors, up to and including the making of the order of sale. Thereafter the proceedings are to be controlled by those provisions of the statutes relating to the sale of the real estate of deceased persons by the county courts in the exercise of their probate jurisdiction. The language of the statute is as follows: "All the proceedings under petition of guardians for sales of property of their wards, giving notice, and the hearing of such petition, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders rejecting or confirming sales and reports

* See footnote 30 on preceding page.

of sale, ordering and making conveyances of property sold, accounting and the settlement of accounts, must be had and made as provided and required by the provisions of law concerning the estates of decedents, unless otherwise specifically provided herein.”³³

While the language of the body of the statute is sufficiently broad to require the giving of notice of application for sale in accordance therewith, it is limited in its application to those cases where not otherwise provided for.

An identical statute was construed, by the Supreme Court of California, as applicable only to matters of procedure not provided for in the chapter relating to Guardian and Ward.³⁴ Inasmuch as the chapter on Guardian and Ward contains a provision prescribing the terms of the order for sale of the real estate of a minor, specifying the character and length of notice to be given, the above statute should be considered as having reference to the notice of sale only, and proceedings subsequent thereto, and not to the notice required to be given on application for an order of sale.

§ 189. **Order of sale.**—If, after a full investigation, it appears necessary, or for the benefit of the ward that his real estate, or some part thereof, should be sold, the court may grant an order specifying therein the cause or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order the sale to be made either at public or private sale.

The statute³⁵ does not prescribe the method or terms of sale, but it seems quite clear that the same is to be governed by the statute applicable to the sale of the real estate of decedents. The statute prescribing the terms and method of sale of the real estate of a decedent requires that the order of sale must describe the lands to be sold and fix the terms of sale, which may be for cash,

³³ Rev. Laws 1910, § 6565.

³⁴ *In re Hamilton's Estate*, 120 Cal. 421, 52 Pac. 708.

³⁵ Rev. Laws 1910, § 6563.

or one-third cash and the balance on credit, not exceeding two years, payable in installments within that time, with interest as the court may direct.³⁶ The land may be sold in one parcel or in subdivisions as the guardian shall judge most beneficial to the estate, unless the court otherwise specifically directs. Every such sale must be at public auction, unless in the opinion of the court it would benefit the estate to sell the whole or some part of said real estate at private sale, in which event, if it be prayed for in the petition, the order directing the sale of such real estate may direct that the same be sold either at public or private sale as the guardian shall judge to be most beneficial to the estate. There can be no objection to including in the order of sale a definite provision whether the sale shall be public or private. The guardian may be, and frequently is, at a loss as to the method of procedure, in the absence of instructions from the court ordering the sale. Whenever it is within the jurisdiction to prescribe in detail the manner of the execution of an order of sale, it is advisable to do so and relieve the guardian of the responsibility of having to act upon his own judgment in matters involving indirect legal questions. The order should also direct whether the sale should be for cash or on credit, and should contain an accurate description of the property ordered sold. An error in the description of the property may not affect the validity of the sale, but the possibility of future controversy arising from defects of this character has a tendency to deter bidders and affect the stability of titles, and full compliance with all provisions is desirable as a safeguard for the protection of minors.³⁷

The statute expressly requires that the order of sale specify the causes or reasons why the same is necessary

³⁶ Rev. Laws 1910, § 6379.

³⁷ *In re Hayden's Estate*, 1 Cal. App. 75, 81 Pac. 668; *Hill v. Wall*, 66 Cal. 130, 4 Pac. 1139; *Wilson v. Hastings*, 66 Cal. 243, 5 Pac. 217; *In re Hamilton's Estate*, 120 Cal. 421, 52 Pac. 708; *Crosby v. Dowd*, 61 Cal. 557.

or beneficial.³⁸ This provision serves two purposes. It directs the court's attention especially to the necessity for a legal reason authorizing the sale and demands an adjudication of the existence of a state of facts authorizing a sale under the statute. A guardian is required to execute an additional bond³⁹ before selling the real estate of a minor, and it is well to include in the order of sale a provision directing the execution of such bond and fixing the amount thereof. If a private sale is directed, it is perhaps desirable that the order should name the appraisers. If not named in the order, they should be promptly appointed by an order duly entered of record.

§ 190. Notice of sale prior to June 17, 1910.—Notice of a sale of the real estate of a minor which is to be made at public auction must be given by posting such notice showing the time and place of the sale, in three of the most public places in the county in which the land is situate and by publishing the same for *three weeks successively next preceding the sale* in a newspaper printed in the same county; if there be no newspaper printed therein, then the notice must be published in such newspaper as the court may direct. The notice is required to give only the time and place of the sale and under the statute need not give the terms and conditions thereof unless required by order of the court. While the statute does not seem to require it, it is certainly advisable that the notice contain the terms of sale.⁴⁰

It will be observed that the provision for publication of the notice of sale differs substantially from the provisions on an application for an order to sell. Upon an application for an order to sell, a personal notice of fourteen days is required *or notice must be published at least three succes-*

³⁸ Rev. Laws 1910, § 6563.

³⁹ Rev. Laws 1910, § 6564: *Fuller v. Hager*, 47 Or. 242, 83 Pac. 782, 114 Am. St. Rep. 916; *Hughes v. Goodale*, 26 Mont. 93, 66 Pac. 702, 91 Am. St. Rep. 410.

⁴⁰ Comp. Laws 1909, § 5318.

sive weeks in newspaper printed in the county, etc. The notice of the time and the place of the sale of the real estate of a minor must be posted in three of the *most* public places in the county in which the land is situated and published in a newspaper, if there be one printed in the same county in which the land is situated, but if none, then in such papers as the court may direct for *three weeks successively next* before the sale. The statute contemplates a publication for three successive weeks next before the sale. What is the effect of the publication of a notice for the given time, but not for three weeks successively *next* before the sale? Or, what is the effect if the notice be published in three successive weekly issues of a newspaper, but the full three weeks have not expired from the date of the first publication, when the day of the sale arrives? A failure to substantially comply with the provisions of the statute would perhaps be held to constitute reversible error on appeal from an order of confirmation, but would the failure to so comply render the sale invalid to such an extent that it could be assailed in any other manner than by appeal? While the authorities are not entirely uniform, it is believed that error or defect in publication cannot be made the basis of collateral attack upon a conveyance made by a guardian under order of sale, where the same has been duly reported to and confirmed by the court.⁴¹

§ 191. Notice of sale subsequent to June 17, 1910.—Where a sale of the real estate of a minor is ordered to be made at public auction subsequent to June 17, 1910,⁴² notice of the time and place of the same must be posted in three public places in each county in which any part of the land to be sold is situated, and in the county where the order of sale is made, and, in addition thereto, must

⁴¹ See authorities cited under section 184, note 26, and section 191, note 43.

⁴² R. L. 1910, § 6559.

be published in each of said counties in some newspaper printed in the county for two successive weeks. The lands and tenements to be sold must be described with common certainty in the notice. The date of sale must be at least fifteen days from the first publication of the notice. What is said with reference to irregularities in the giving, posting, or publication of notice of sale in the preceding section is applicable to proceedings under this section. Under the peculiar wording of this statute some embarrassment might be occasioned if a sale of real estate should be sought to be made in a county in which no newspaper is published, as notice is required both by posting and publication.⁴³

§ 192. **Time and place of sale.**—Sales at public auction must be made in the county where the land is situated, but where situated in two or more counties it may be sold in either. The sale must be made between nine o'clock in the morning and the setting of the sun on the same day, and on the day named in the notice unless postponed to a future day.⁴⁴

If, at the time appointed for the sale, the guardian deems it for the best interest of the persons concerned therein that the sale be postponed, he may postpone the same from day to day, not exceeding in all three months.⁴⁵ In case of postponement, notice ⁴⁶ thereof must be given by public declaration at the time and place appointed for the sale, and if postponement be for more than one day further notice must be given by posting in three or more public places in the county where the land is situated, or by publishing the same, or both, as the time and circumstances will admit.

⁴³ *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *Mohr v. Tulp*, 40 Wis. 66; *Scarf v. Aldrich*, 97 Cal. 360, 32 Pac. 324, 33 Am. St. Rep. 190; *Zillmer v. Gerichten*, 111 Cal. 73, 43 Pac. 408; *Blackman v. Mulhall*, 19 S. D. 534, 104 N. W. 250. See, also, cases cited under section 184.

⁴⁴ Rev. Laws 1910, §§ 6381, 6382.

⁴⁵ Rev. Laws 1910, § 6391.

⁴⁶ Rev. Laws 1910, § 6392.

It is evidently the purpose of the statute to require the giving of adequate notice of the postponement of a guardian's sale. Subject to a compliance with the provisions of the statute, the guardian may give such notice as will, under the circumstances, in his judgment, keep the public best informed as to the time and place when the sale will be made. The court probably has authority to direct the sale to be made either at the courthouse door, upon the land, or at such other place as will give opportunity for competition.

§ 193. The real estate of a minor may, upon order of the county court, be sold by his guardian at private sale.— In order to secure authority to sell at private sale, the petition for the order to sell should contain a prayer that such authority be given. Private sales are usually not ordered unless good reasons therefore exist, and are not confirmed unless the statutes have been fully complied with. The procedure necessary to secure the disposition of the real estate of a minor by private sale is materially different from that securing an order for public sale. Procedure in making the sale, and the return thereon also differ very materially from that where the sale is public.⁴⁷

The notice of such sale must be posted in three of the most public places in the county *and* published in a newspaper printed in the county, if there be any, and if none, then in such papers as the court may direct, for two weeks successively *next* before the day on or that after which the sale is to be made. The day on or after which the sale is to be made must be at least fifteen days from the first publication of the notice and the sale must not be made before such day, but must be made on said day or within six months thereafter.

The notice must also contain a correct description of the land; the bids must be in writing and may be left at a place designated, delivered to the guardian, or filed in the office of

⁴⁷ Rev. Laws 1910, §§ 6383, 6384.

the judge. Such bids may be made at any time after the publication of the notice and before the making of the sale. The court or judge may, if the best interest of the minor will be subserved, shorten the time of the notice, but in no event to less than one week, and may direct a sale to be made not less than eight days from the first publication of the notice.

What is said in previous sections regarding the publication of the notice of an application to sell and of notice of sale, is applicable to the notice to be given under the provisions of this section.

The Supreme Court of California, it seems, has construed this provision, where applicable to the sale of estates of decedents, as requiring a strict compliance with the statute, evidently because such proceedings are regarded as adverse in their nature as to the heirs and other persons interested and they are therefore entitled to notice of all proceedings taken, looking to the sale or disposition of the lands of the decedent.

The real estate of a minor must be appraised before the sale thereof and the sale may not be confirmed unless the bid equals 90 per cent. of the appraised value. The appraisal may be made at any time before the sale or the confirmation thereof. If the lands offered for sale have previously been appraised, but more than a year has expired since their appraisal, they are required to be reappraised under this section.⁴⁸

While such sale is termed a private sale, it is not so in the ordinary sense of the word. It is in fact at auction to the highest bidder, the amount bid by each individual being kept concealed from other bidders until the final award.⁴⁹

§ 194. Proof of service.—Notice is required to be served of the order to show cause why the real estate of a minor

⁴⁸ Rev. Laws 1910, § 6384.

⁴⁹ Estate of Dorsey, 75 Cal. 260, 17 Pac. 209; In re O'Sullivan, 84 Cal. 444, 24 Pac. 281; People v. Reclamation Dist. No. 136, 121 Cal. 522, 50 Pac. 1068, 53 Pac. 1085.

should not be sold, of the order of sale, of the application for the confirmation of the sale where not made on the first day of the next succeeding term thereafter, and in other instances in proceedings where sale of the real estate of a minor is sought.

Notice⁵⁰ is usually by publication or posting, although sometimes it is personal. The statute directing the publication to be made does not limit the character of the newspaper in which same may be made otherwise than by requiring it to be in the county where the proceedings are pending in certain instances, and in others in the county in which the land to be sold is situated.

Section 5071, Rev. Laws 1910, provides that an affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action. The provisions of this section are applicable to the various notices required to be given in a probate proceeding whether the service be personal, by posting, or publication. The affidavit should in every instance cover all that the statute requires to be done in posting the notice or in making the publication or personal service. For instance, if the affidavit is to prove service of notice, it should state that such notice was posted in three of the *most* public places in the county in which the land is situated, naming the places, and if to prove publication that the same was published in a newspaper printed in the county for three weeks *successively next* before the sale. There is no requirement as to the character of the newspaper in which the publication shall be made in any of the sections relating to probate procedure, but section 2954, Rev. Laws 1910, being an act of the Legislature approved March 6, 1907, provides that no legal notice required to be published shall have any force or effect as such unless published in a newspaper of the county having a general circulation therein, and which

⁵⁰ In re Cunningham, 73 Cal. 558, 15 Pac. 136; In re O'Sullivan, 84 Cal. 444, 24 Pac. 281; Hellman v. Merz, 112 Cal. 661, 44 Pac. 1079.

newspaper has been continuously and uninterruptedly published in said county during a period of fifty-two consecutive weeks prior to the first publication of the notice. There are several provisos, some of which are as follows: That of moving from one county to another or changing the name shall not constitute a break in the continuity of the publication, nor shall the failure to issue the paper for fourteen days on account of inability resulting from accident, fire, etc., or interruption by legal proceedings, be deemed a failure to maintain continuous and consecutive publication. That such requirements do not apply to papers having contracts for county printing.

It is further provided in said section that any newspaper that had been published and circulated one week prior to the taking effect of said act shall be in law construed to have been continuously published for fifty-two weeks. Under this provision, perhaps any newspaper published and circulated one week prior to statehood in what was formerly Indian Territory was upon the incoming of statehood legally authorized to publish legal notices. It is not readily apparent that this section applies to notices in making probate sales. Such publications, however, are usually made in newspapers that have been published for more than a year, and it is not difficult to so make the affidavit as to show a compliance with this statute. County courts are familiar with the length of time newspapers in their counties have been published, and notices should not be permitted to be published in papers which cannot in the proof of publication comply with the provisions of the statute with reference to length and continuity of publication. The affidavit of publication should show that the newspaper had been published continuously for fifty-two weeks next preceding the first insertion of the notice, that the notice had been published consecutively in every issue of the paper from the day of its insertion to the day of final publication, and should show the date of the first and last insertions. It

should also show whether the newspaper is a daily or a weekly paper, and, if both, whether published in the daily or weekly issue. The notice of posting should state the time and place thereof. The affidavit which states only that notice was posted at a town or city gives but little opportunity for ascertaining whether the place of posting was one of the most public places in the county or not. The affidavit of posting should in every instance show that the notice was posted at three of the *most* public places in the county naming with some degree of particularity the place of posting, so that the court may determine the facts in reference thereto.

Defects in proof of notice of publication, of posting, or personal service are always subject to amendment to conform to the facts. Amendments, therefore, may be made at any time when the sufficiency of the affidavit is brought in question, provided always that the amendment is made for the purpose of making the proof conform to the facts as to the service.

§ 195. Return of sale and proceedings thereon prior to June 17, 1910.—The statutes ⁵¹ in force in the state of Oklahoma prior to June 17, 1910, required a return of the proceedings under the order of sale into court, but did not prescribe what the return should contain. It should, however, set out in full detail all proceedings had in the execution of the order of sale,⁵² and there should be attached thereto a copy of the notices posted, with an affidavit as to the time and place of posting, with the further statement that they were posted in three of the most public places in the county, stating in detail the particular places of posting. It should not state conclusions of the affiant, but should state the facts. It should also state the char-

⁵¹ Comp. Laws 1909, § 5323.

⁵² *Bennallack v. Richards*, 125 Cal. 427, 58 Pac. 65; *In re Durham's Estate*, 49 Cal. 490; *Perkins v. Gridley*, 50 Cal. 97; *Bennallack v. Richards*, 116 Cal. 405, 48 Pac. 622.

acter of the newspaper in which the publication was made, whether daily or weekly, that it is a newspaper of general circulation in the county, and the date of each insertion, and that it was published in each successive issue. While the publication in a daily newspaper for once a week for three weeks might be held a sufficient compliance with the statute, it is desirable that publication be made in a weekly issue.

The affidavit should further show that the paper is one of the character prescribed in the statute in which a publication may be made. The return should be made in detail, in order that upon request for confirmation the court may judicially determine and adjudge whether the statute has been complied with. The court may determine such facts upon return, omitting the details; but the record upon collateral or other attack will be stronger if the guardian's report discloses the entire facts touching the proceedings had in the execution of the order of sale, and that they were in accordance with the statute. If the statutes have not been complied with in every particular, or if the procedure is defective, the court may give an opportunity to correct the defect, if it can be done, and if not, may order a new sale before the purchaser has been placed in possession, where it would be difficult to put him in statu quo. If the return discloses serious defects or improper proceedings, confirmation should be refused and a new sale ordered. Questionable procedure in the sale of the real estate of minors may result in evasions of the law, and, in a jurisdiction where so many titles are dependent upon probate sales, much expensive and unnecessary litigation disturbing titles, retarding the development of the country and creating a cloud upon titles acquired at probate sales. Such results may be largely avoided by proper diligence in observing and complying with statutory requirements.

§ 196. Return of sale subsequent to June 17, 1910, and proceedings in confirmation thereof.—The guardian is re-

quired by statute⁵³ to make return of his proceedings to the county court, which must be filed by the judge, at a time subsequent to the sale. Upon the filing of such return, or thereafter, the court or judge must fix a day for the hearing thereon, of which notice of at least ten days must be given by the judge by posting in three public places in the county, or by publication in a newspaper, or both, as he may deem best. The notice must briefly describe the land sold, the sum for which it was sold, and refer to the return for further particulars. Upon a hearing the court must examine the return and the witnesses in relation to the same, and if the proceedings were unfair, the sum bid disproportionate to the value, or if it appears that a sum exceeding such bid by at least 10 per cent., exclusive of the expenses of a new sale may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given and the sale in all respects conducted as if no previous sale had taken place.* If an offer of 10 per cent. or more in amount than that named in the return be made to the court, in writing, by a responsible person, the court may, in its discretion, accept such offer and confirm the sale, or order a new sale.⁵⁴

What is said with reference to notice, etc., in the preceding section is applicable to this section.

Upon the return of a sale any person interested in the estate may file written objection to the confirmation thereof, and may be heard thereon when the return is heard by the court or judge, and may produce witnesses in support of his objections. If it appear to the court that the sale was lawfully made and fairly conducted, the sum bid not disproportionate to the value of the property, and that a

⁵³ Rev. Laws 1910, §§ 6380, 6383.

* In re Bohanan (Okl.) 133 Pac. 45.

⁵⁴ In re Durham's Estate, 49 Cal. 490; In re Pearsons' Estate, 98 Cal. 603, 33 Pac. 451; Bennallack v. Richards, 125 Cal. 427, 58 Pac. 65; Gregory v. Taber, 19 Cal. 397, 79 Am. Dec. 219; In re Spriggs' Estate, 20 Cal. 121; Halleck v. Guy, 9 Cal. 181, 70 Am. Dec. 643; Levy v. Riley, 4 Or. 398; McCallum v. Chicago Title & Trust Co., 203 Ill. 142, 67 N. E. 823.

greater sum could not be obtained, or if an increased bid be made and accepted by the court, the court must make an order confirming the sale and directing conveyance to be executed. From and after the making of said order such sale is confirmed and valid, and a certified copy of the order of confirmation directing a conveyance to be executed must be recorded in the office of the register of deeds in the county in which the land sold is situated. Before the order is entered confirming the sale, it must be proven to the satisfaction of the court that the notice was given of the sale as prescribed in the statute. The order of confirmation should recite that such proof was made. Jurisdiction is not only conferred upon the county court on presentation of the guardian's return to investigate and adjudge whether the provisions of the statutes have been complied with, but the duty is imposed upon such court so to do. Such confirmation must be upon notice or at a time fixed by statute of which all persons must take notice. An adjudication in such proceeding that the various provisions of the statute have been complied with should be *res judicata* in subsequent controversies. A broad discretion is conferred upon the county courts in the matter of the confirmation of sales of real estate of minors, but not without regard to the rights of a prospective purchaser who is the highest and best bidder at the sale. He has rights, both legal and moral, which should receive due consideration in determining whether or not the confirmation of sale will be entered.⁵⁵

§ 197. **Limitation on time of sale.**—The statute provides that no order of sale of the real estate of a minor continues in force more than a year after granting the same without

⁵⁵ *Wilson v. Morton*, 29 Okl. 745, 119 Pac. 213; *In re Billy*, 34 Okl. 120, 124 Pac. 608; *In re Bohanan* (Okl.) 133 Pac. 45; *Morrison v. Burnett*, 154 Fed. 617, 83 C. C. A. 391; *In re Arguello's Estate*, 50 Cal. 308; *In re Devincenzi's Estate*, 119 Cal. 498, 51 Pac. 845; *In re Jack's Estate*, 115 Cal. 203, 46 Pac. 1057; *In re Leonis' Estate*, 138 Cal. 194, 71 Pac. 171; *In re Reed's Estate*, 3 Cal. App. 142, 85 Pac. 155.

a sale being had.⁵⁶ This section was adopted in Oklahoma from the Dakota Code of 1887, and by Dakota from the California Code of Civil Procedure. Similar provisions are in force in other states. In the many years that this statute has been in force in California, Dakota and Oklahoma the courts of last resort of neither of these states have been called upon to construe the same.

What is required to be done under this statute within the year? Must the sale be made and confirmed within the year, or is it sufficient that the property be offered for sale and the bids received and the highest and best bid reported within the year? The language is that "no order of sale shall continue in force more than one year." The order of sale is a commission to the guardian to offer the land ordered to be sold at public auction to the highest bidder at a time and place to be fixed and upon the giving of the notice required by the statute. In reason it would seem that, when the property is offered for sale and the bid has been received, the function of the order of sale has been discharged. Neither the report of the guardian, the application to confirm, the notice of the hearing on the application to confirm, nor the order of confirmation is in execution of the order of sale.

It would seem, therefore, that the sale might be confirmed after the expiration of the year, where the property is offered and the bid received within the year. However, in the absence of judicial interpretation, it is undoubtedly advisable that confirmation be had within the year.

§ 198. Conveyance by guardians.—Upon confirmation a conveyance must be executed to the purchaser by the guardian, and such conveyance must refer to the orders of the county court authorizing and permitting the sale and directing the conveyance thereof to be executed, and to the record of the order of confirmation in the office of the register of deeds by volume and page of record. Convey-

⁵⁶ Rev. Laws 1910, § 6566.

ances so made operate to convey all the right, title, interest and estate of the minor in the premises.⁵⁷ The interest passing is not particularly described, because the statutes with reference to conveyances of decedents by executors and administrators are made applicable. Such conveyances, however, no doubt operate to pass all of the interest of the minor in the real estate conveyed.

A purchaser at a guardian's sale does not acquire title on confirmation and payment of the purchase money. It is necessary to pass title that a guardian's deed be executed and delivered.⁵⁸

§ 199. Sales for railroad purposes.—The statutes⁵⁹ of Oklahoma provide that, if a railroad corporation shall take any real property of a minor, insane person, or person otherwise incompetent, the guardian of such minor may agree and settle with said corporation for all damages or claims by reason of the taking of such real property, and may give valid releases and discharges therefor upon the approval thereof by the judge of the probate court. This statute affords a means of acquiring the real estate of a minor for railroad purposes other than by condemnation. Under like statutes it has been held that a guardian has not authority to donate land for a right of way or station grounds to a railway company. The statute evidently contemplates that the minor shall receive fair compensation for the property taken or damage done, that when an agreement is reached the guardian shall make report of such agreement to the county court, and that the judge thereof shall, if upon investigation he finds that the settlement is not prejudicial to the interest of the minor, approve the same, which approval authorizes the use of the lands for railway purposes

⁵⁷ Rev. Laws 1910, §§ 6389, 6565.

⁵⁸ *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *In re Billy*, 34 Okl. 120, 124 Pac. 608; *Spade v. Morton*, 28 Okl. 384, 114 Pac. 724; *Theller v. Such*, 57 Cal. 447; *Gutter v. Dallamore*, 144 Cal. 665, 79 Pac. 383; *Gregory v. Taber*, 19 Cal. 397, 79 Am. Dec. 219.

⁵⁹ Rev. Laws 1910, § 1406.

and discharges the railway company from liability arising from taking and using the same.⁶⁰

§ 200. **Minors—Mortgage of estates.**—The guardian of the estate of a minor or insane person is authorized by section 6364, Revised Laws 1910, to mortgage any real estate belonging to such minor, but not for a greater sum than is necessary to pay the existing liabilities for which such estate is legally liable to be ordered sold. It will be noted that incompetents, included in other provisions of the statute, are omitted from this section. It is probable, however, that the word "insane," as used in the section, includes all who are mentally incapable of conducting their own affairs and who have been so adjudged and a guardian appointed for their estates. Upon the filing of a petition for leave to mortgage by the guardian, the county judge is required to set a time for the hearing, and the guardian is required to cause notice thereof to be given by publication in a newspaper published and of general circulation in the county where such hearing is to be had. Such notice must contain a description of the real estate sought to be mortgaged and must be published for two weeks successively prior to such hearing.⁶¹

§ 201. **Oil and gas leases.**—The statute ⁶² authorizes the guardians of infants and insane persons to lease and grant mineral oil and mineral gas leases in consideration of a royalty, part or portion of the production thereof, under the same procedure as provided by law where the consideration is money, and in the following section all leases of such character theretofore made and approved by the county court are legalized. These sections of the statute were enacted in 1905. At the time of their enactment there was

⁶⁰ *Indiana, B. & W. Ry. Co. v. Brittingham*, 98 Ind. 299; *State v. Hamilton County Com'rs*, 39 Ohio St. 58.

⁶¹ *Fitch v. Miller*, 20 Cal. 361; *Smith v. Biscailuz*, 83 Cal. 344, 21 Pac. 15, 23 Pac. 314; *Howard v. Bryan*, 133 Cal. 257, 65 Pac. 462.

⁶² Rev. Laws 1910, § 6547.

no specific provision prescribing the procedure to be followed by a guardian in leasing the lands of his ward for either agricultural, grazing, commercial or mineral purposes, nor is there now such a statute.

What is the procedure for the making of a valid oil and gas mining lease of the allotted lands of a minor held free from restrictions on alienation? This question has been recently exhaustively considered by the Supreme Court of the state in a case brought on behalf of a minor, by his mother as next friend, against his guardian and the lessee from the guardian, to have declared null and void an oil and gas lease upon the minor's estate and to enjoin the further taking out of oil and for an accounting and recovery for waste already committed. The court held, after an exhaustive examination of the authorities, that a lease for oil and gas mining purposes for a term of years is not a sale of real estate within the contemplation of the statutes requiring a petition for, notice of, advertising, and public sale, of the real estate of a minor; that oil and gas is a chattel real, and that the procedure for leasing minor lands for oil and gas purposes is that prescribed by section 6569 of the Revised Laws of 1910, and not that prescribed by sections 6554 to 6568, inclusive. The rule announced in a previous case⁶³ that an oil and gas lease is an alienation within the meaning of that term in allotment agreements and acts was adhered to. The procedure for the making and approval of an oil and gas lease by a guardian for a minor is stated by the court in the following language: "On account of section 5513, Comp. Laws 1909,* which provides: 'The county court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all

⁶³ Eldred v. Okmulgee Loan & Trust Co., 22 Okl. 742, 98 Pac. 929.

* Revised Laws 1910, § 6569.

concerned therein; and *the probate court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require*" (italics ours)—a guardian has no authority to lease the lands of his ward, or enter into a license or contract covering the same, for oil and gas mining purposes, without the direction and approval of the probate court. For said section stipulates that the probate court may 'make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require.' The rule obtaining at common law for the guardian to lease the lands of his ward without the approval of the court is thereby changed."⁶⁴

§ 202. Oil and gas—Leases for—Of lands of minors under Act of May 27, 1908.—The usual and approved procedure for the leasing of the lands of a minor for oil, gas and mineral purposes is for the guardian to file with the county court in which the guardianship proceeding is pending a petition for authority to lease the lands of the minor for such purpose. The petition should set forth the facts necessary for the consideration of the court in determining whether or not to authorize a lease.

If in the opinion of the court, it is for the best interests of the minor that his lands be leased for such purposes, an order should be entered of record directing the guardian to receive bids and offers for such a lease.

The guardian should, pursuant to the order, receive such bids and report the same to the court, showing in detail the cash bonus per acre, the total bonus, the royalty to be paid on oil produced and saved, and the amount to be paid for each gas well.

If on a consideration of the report the court is of the opinion that any bid should be accepted, an order should be made confirming the sale of the lease and directing the

⁶⁴ Duff v. Keaton, 83 Okl. 92, 124 Pac. 291.

execution by the guardian to the purchaser of an oil, gas and mining lease and to make return thereof to the court for final action and approval.

The guardian should thereupon submit such lease so executed to the court for approval and an order should be entered by the court confirming and approving the same.

§ 203. Collateral attack on sale.—Upon a review by appeal or other proceeding, a failure to substantially comply with any of the provisions of the statute may furnish sufficient reason for a reversal of the order of sale or confirmation.*

Where, however, the sale is attacked collaterally or in any proceeding other than by way of review of the action of the court ordering and confirming the sale, every presumption should be indulged in favor of the regularity of the sale. County courts are courts of general jurisdiction and their records are entitled to the same consideration and import the same verity, where dealing with the estates of minors, as do the records of courts of general jurisdiction.

The interest of the individual minor may be subserved by holding void a sale of his real estate, because of the failure to comply with some statutory provision affecting or controlling the procedure resulting in such a sale; but if technicalities may be availed of to have the sale of lands of minors adjudged void, the great majority of purchasers will be deterred from bidding at such sales. The net result will be a very substantial reduction in the prices bid for the lands of minors so sold. Every decision of an appellate court rendering less stable the title acquired by sale upon order of a court materially reduces the number of bidders who will purchase at such sale and thereby materially reduces the amount that may be realized thereon.

While every precaution should be taken to protect a minor against fraud and imposition, the desire to afford such protection should not be treated as a license to take from another that which he has purchased in good faith and

* In re Bohanan (Okl.) 133 Pac. 45.

paid for and the proceeds of which have been paid to the guardian for the minor.

It is only by giving the greatest stability possible to the title acquired by purchase at a probate sale of the real estate of a minor, that purchasers can be found who will pay the approximate value of such real estate when offered for sale.⁶⁵

§ 204. Guardianship, how terminated.—Death, arrival at majority, or formal discharge of the guardian terminates the guardianship. Several statutory provisions in force in the state seem to indicate that marriage operates to supersede the authority of a guardian and to discharge the person if not the estate of the minor, from guardianship control. On this assumption following statehood, many conveyances were made by married minors before they became 21 and 18 years of age respectively. Majority rights were also conferred upon Indian minors by judgment of the courts of the state.

It has been uniformly held, and without dissent, under the acts of Congress fixing the right of alienation of allotted and inherited Indian lands that marriage does not confer majority rights or operate to discharge the real estate of the minor from the control of his guardian, and that a conveyance by a married minor Indian or freedman of his allotted or inherited land is invalid and does not operate to pass title.⁶⁶

⁶⁵ *Eaves v. Mullen*, 25 Okl. 679, 107 Pac. 433; *Brown v. Trent* (Okl.) 128 Pac. 895; *In re Bohanan* (Okl.) 133 Pac. 45; *Grignon v. Astor*, 2 How. 319, 11 L. Ed. 283; *Mohr v. Manierre*, 101 U. S. 417, 25 L. Ed. 1052; *Thaw v. Falls*, 136 U. S. 548, 10 Sup. Ct. 1037, 34 L. Ed. 531; *Guynn v. McCauley*, 32 Ark. 107; *Currie v. Franklin*, 51 Ark. 338, 11 S. W. 477; *Beldler v. Friedell*, 44 Ark. 411; *Whitman v. Fisher*, 74 Ill. 152; *Benson v. Benson*, 70 Md. 258, 16 Atl. 657; *Johnson's Adm'r v. Filtsch* (Okl.) not yet reported; *Hamel v. Donnelly*, 75 Iowa, 93, 39 N. W. 210; *Schaale v. Wasey*, 70 Mich. 414, 38 N. W. 317; *Walker v. Goldsmith*, 14 Or. 125, 12 Pac. 537; *Kelley v. Morrell* (C. C.) 29 Fed. 736; *Dodson v. Middleton* (Okl.) 135 Pac. 368.

⁶⁶ *Bell v. Cook* (C. C.) 192 Fed. 597; *Jefferson v. Winkler*, 26 Okl. 653, 110 Pac. 755; *Stevens v. Elliott*, 30 Okl. 41, 118 Pac. 407; *Kirkpatrick v. Burgess*, 29 Okl. 121, 116 Pac. 764; *Yarbrough v. Spald-*

It has likewise been held that conferring majority rights by judgment of a court does not terminate the guardianship or authorize a conveyance of allotted or inherited land prior to the time when the allottee or heir arrives at the age of twenty-one or eighteen years of age, as the case may be dependent upon sex.⁶⁷

ing, 31 Okl. 806, 123 Pac. 843; Chapman v. Siler, 30 Okl. 714, 120 Pac. 608; Gill v. Haggerty, 32 Okl. 407, 122 Pac. 641; Grissom v. Beldleman, 35 Okl. 343, 129 Pac. 853; Priddy v. Thompson (C. C. A.) 204 Fed. 955.

⁶⁷ Truskett v. Closser, 198 Fed. 835, 117 C. C. A. 477.

CHAPTER 23

CONVEYANCES OF TIMBER ON ALLOTTED INDIAN LANDS

§ 205. Sale of timber on allotted lands of allottees of the Five Civilized Tribes.

206. Sale of timber on allotted lands of allottees of other than those of the Five Civilized Tribes.

§ 205. Sale of timber on allotted lands of allottees of the Five Civilized Tribes.—Section 16 of the Act of June 28, 1898,¹ contained a proviso in the following language: "Provided further, that nothing herein contained shall impair the rights of any member of a tribe to dispose of any timber contained on his, her or their allotment." The tribes being dealt with by this act were the Five Civilized Tribes in the Indian Territory.

Section 2 of the Timber and Stone Act, approved January 21, 1903,² contained a further proviso as follows: "Provided, however, that nothing herein contained shall be construed to prevent allottees from disposing of timber and stone on their allotments as provided in section 16 of an act entitled 'An act for the protection of the people of the Indian Territory and for other purposes,' approved June 28, 1898, from and after the allotment by the Commission to the Five Civilized Tribes."

Section 38 of the Original Creek Agreement³ provides that "After any citizen has selected his allotment he may dispose of any timber thereon, but if he disposes of such timber or any part of same, he shall not thereafter select other lands in lieu thereof, and his allotment shall be appraised as if in condition when selected."

Section 16 of the Act of June 28, 1898, is apparently construed by Congress in section 2 of the Act of January 21, 1903, to permit allottees of the Five Civilized Tribes to dispose of the timber on their allotments from and after allot-

¹ See section 408.

² See section 385.

³ See section 647.

ment by the Commission to the Five Civilized Tribes and this is substantially the construction given the act by the Assistant Attorney General for the Department of the Interior under date of August 8, 1903. This construction has been adhered to by the department ever since. The Assistant Attorney General was of the opinion that a conveyance of timber could not be made until after issuance of the allotment certificate.

It will be noted that none of these provisions contain affirmative authority to sell. Considered together it seems reasonably clear that Congress by these several provisions intended that the members of the Five Civilized Tribes should "from and after allotment by the Commission" be permitted to sell and convey the timber upon their allotments. While the language appears to be more in recognition of a right than a positive declaration of the same, it is fairly susceptible of the construction authorizing such sale and disposition. If it does not confer upon the allottee the right to sell his timber after he takes his land in allotment, then the provisos to the Act of June 28, 1898, and of January 21, 1903, are each ineffectual for any purpose.

The immense forests of pine and hard wood timber located in the Choctaw Nation have been and are, an attractive field for the investment of those desiring to purchase standing timber. Conveyances are usually taken of the timber for a given price, the timber to be removed within a given time. Such conveyances also contain provision for ingress and egress from the lands of the allottee selling the timber, both as to the timber cut on his own land and the timber cut from the lands of others. Large sums of money have been invested in conveyances of this character.

Timber transfers usually partake of the nature of a real estate conveyance and are witnessed, acknowledged and recorded as such. The general rule is that standing timber is a part of the real estate, and title passes when the con-

veyance is executed in the manner and form required for a conveyance of real estate, and acknowledged as conveyances of real estate are required to be acknowledged. It is believed that the provisions of the law permitting the allottee to alienate his timber does not relieve the purchaser from the necessity of securing a conveyance, executed, acknowledged and recorded as conveyances of real estate are required to be executed, acknowledged and recorded.*

Some controversy has arisen over the construction of timber conveyances of the character of those taken by purchasers of timber from allottees of the Five Civilized Tribes. Does the conveyance of timber to be removed within a given period convey an absolute title to the timber with only the privilege to cut and remove within a given time? Or does it convey only so much timber as shall be cut and removed within the time provided within the conveyance? These are questions that must of necessity depend upon the terms of the particular conveyance under consideration. The general disposition seems to be to hold an ordinary conveyance of this character to pass title to only such timber as is cut and removed during the time limit contained in the contract.⁴

§ 206. **Sale of timber on allotments of allottees of other than those of the Five Civilized Tribes.**—There is a pronounced want of harmony in the opinions of the courts involving the right of allottees of other than the Five Civilized Tribes to sell or otherwise dispose of timber on allotted Indian lands and especially of growing timber.

In one of the earlier cases involving the ownership of the timber cut from an Indian reservation it was held by the Supreme Court of the United States:⁵ "The timber while standing is a part of the realty, and it can only be sold as

* *Neils Lumber Co. v. Hines*, 93 Minn. 505, 101 N. W. 959.

⁴ *Bettes v. Brower* (D. C.) 184 Fed. 342; *Neils Lumber Co. v. Hines*, 93 Minn. 505, 101 N. W. 959.

⁵ *United States v. Cook*, 19 Wall. 591-593, 22 L. Ed. 210.

the land could be. The land cannot be sold by the Indians, and consequently the timber, until rightfully severed, cannot be. It can be rightfully severed for the purpose of improving the land, or the better adapting it to convenient occupation, but for no other purpose. When rightfully severed it is no longer a part of the land, and there is no restriction upon its sale. Its severance under such circumstances is, in effect, only a legitimate use of the land. In theory, at least, the land is better and more valuable with the timber off than with it on. It has been *improved* by the removal. If the timber should be severed for the purposes of sale alone—in other words, if the cutting of the timber was the principal thing and not the incident—then the cutting would be wrongful, and the timber, when cut, become the absolute property of the United States.”

In a subsequent case, involving a large amount of timber cut from an Indian reservation, the rule above declared was reaffirmed.⁶

Subsequently the United States brought another suit against a lumber company⁷ to recover the value of a large amount of timber manufactured from trees cut from an allotment of the allottee of a member of the Stockbridge and Munsie Tribes of Indians. The terms of the grant to the Stockbridge and Munsie allottees were substantially these: “After survey into the usual subdivisions the council of the tribes, under the direction of the superintendent, shall ‘make a fair and just allotment among the individuals and families of their tribes,’ in eighty-acre tracts to heads of families and other classes named, and forty acres to others. The allottees ‘may take immediate possession thereof, and the United States will thenceforth and until the issuing of “patents” hold the same in trust for such persons’; certificates are to be issued ‘securing to the holders their possession and

⁶ *Pine River Logging & Improvement Co. v. United States*, 186 U. S. 279, 22 Sup. Ct. 920, 46 L. Ed. 1164.

⁷ *United States v. Paine Lumber Co.*, 206 U. S. 467–471, 27 Sup. Ct. 697, 51 L. Ed. 1139.

an ultimate title to the land'; but 'such certificates shall not be assignable, and shall contain a clause expressly prohibiting the sale or transfer by the holder' of such land. After ten years, upon application of the holder and consent of the Council, 'and when it shall appear prudent and for his or her welfare, the President of the United States may direct that such restriction on the power of sale shall be withdrawn and a patent issued in the usual form.' In the event of the death of an allottee without heirs, before patent, the allotment was not to revert to the United States, but to the tribe for disposition by the Council. It is further declared (article 11): "The object of this instrument being to advance the welfare and improvement of said Indians, it is agreed, if it prove insufficient, from causes that cannot now be foreseen, to effect these ends, then the President of the United States may, by and with the advice and consent of the Senate, adopt such policy in the management of their affairs as in his judgment may be most beneficial to them; or Congress may, hereafter, make such provisions of law as experience shall prove necessary.'"

The judgment was for the defendant in the trial court, and a writ of error was sued out to the Supreme Court of the United States. That court in disposing of the controversy uses the following language:^a "Indeed, it may be said that arable land is of no use until the timber is off, and it was of arable land that the treaty contemplated the allotments would be made. We encounter difficulties and baffling inquiries when we concede a cutting for clearing the land for cultivation, and deny it for other purpose. At what time shall we date the preparation for cultivation and make the right to sell the timber depend? Must the ax immediately precede the plow and do no more than keep out of its way? And if that close relation be not always maintained, may the purpose of an allottee be questioned and

^a *United States v. Paine Lumber Co.*, 206 U. S. 467, 27 Sup. Ct. 697, 51 L. Ed. 1139.

referred to some advantage other than the cultivation of the land, and his title or that of his vendee to the timber be denied? Nor does the argument which makes the occupation of the land a test of the title to the timber seem to us more adequate to justify the qualification of the Indian's rights. It is based upon the necessity of superintending the weakness of the Indians and protecting them from imposition. The argument proves too much. If the provision against alienation of the land be extended to timber cut for purposes other than the cultivation of the land it would extend to timber cut for the purpose of cultivation. What is there in the latter purpose to protect from imposition that there is not in the other? Shall we say such evil was contemplated and considered as counterbalanced by benefit? And what was the benefit? The allotments, as we have said, were to be of arable lands, useless maybe, certainly improved by being clear of their timber, and yet, it is insisted, that this improvement may not be made, though it have the additional inducement of providing means for the support of the Indians and their families. We are unable to assent to this view."

In a subsequent opinion the Paine Lumber Company Case was distinguished and the rule there declared perhaps materially modified. It was held that the restrictions on the right of alienation of lands allotted in severalty under the Chippewa Treaty extended to the disposition of timber on the land as well as to the land itself.⁹ In the concluding paragraph of the opinion it is said: "The restriction upon alienation, however, it is contended, does not extend to the timber, and *United States v. Paine Lumber Co.*, 206 U. S. 467, 27 Sup. Ct. 697, 51 L. Ed. 1139, is adduced as conclusive of this. We do not think so. There, as said by the Solicitor General, the land granted was arable, and could be of no use until the timber was cut; here the land granted is

⁹ *Starr v. Campbell*, 208 U. S. 527, 534, 28 Sup. Ct. 365, 52 L. Ed. 602.

all timber land. And that the distinction is important to observe is illustrated by the allegations of the complaint. It is alleged that the value of the land, exclusive of the timber, is no more than \$1,000; fifteen thousand dollars' worth of lumber has been cut from the land. The restraint upon alienation would be reduced to small consequence if it be confined to one-sixteenth of the value of the land and fifteen-sixteenths left to the unrestrained or unqualified disposition of the Indian. Such is not the legal effect of the patent."

Other cases more or less instructive are noted in the margin.¹⁰

¹⁰ *United States v. Auger* (C. C.) 153 Fed. 671; *United States v. Torrey Cedar Co.* (C. C.) 154 Fed. 263.

CHAPTER 24

LEASES—AGRICULTURAL, GRAZING, AND MINERAL PURPOSES, UNDER ALLOTMENT AGREEMENTS

- § 207. Leases for agricultural, grazing and mineral purposes—Cherokee Nation.
- 208. Leases for agricultural, grazing and mineral purposes—Choctaw and Chickasaw Nations.
- 209. Leases for agricultural, grazing and mineral purposes—Creek Nation.
- 210. Leases for agricultural, grazing and mineral purposes—Seminole Nation.
- 211. Leases by full-blood allottees of the Five Civilized tribes for agricultural purposes under the Act of April 26, 1906.
- 212. Leases of Choctaw and Chickasaw allottees for all purposes as affected by section 20 of the Act of April 26, 1906.
- 213. Leases for agricultural purposes as affected by the Act of May 27, 1908.
- 214. Oil and gas—Leases for under Act of May 27, 1908.
- 215. Oil and gas—Leases for under Act of May 27, 1908.
- 216. Leases of allotted lands under section 3 of the Act of February 28, 1891.
- 216a. Leases by allottees of other than the Five Civilized Tribes and Osages for Mineral Purposes.
- 217. Leases of allotted Indian lands held in trust under Act of June 25, 1910.
- 218. Modoc—Leases for agricultural purposes.
- 219. Osage—Leases for agricultural purposes.
- 220. Leases—Peoria, Kaskaskia, Plankeshaw, Wea, and Western Miami.
- 221. Leases by allottees of the Quapaw Agency.

§ 207. Leases for agricultural, grazing and mineral purposes—Cherokee Nation.—The Cherokee Allotment Agreement authorized Cherokee allottees to rent their allotments or any part thereof for a term not to exceed one year for grazing purposes only, not to exceed five years for agricultural purposes, but in each case without any stipulation or obligation to renew. Leases for a longer period than one year for grazing purposes and for a period longer than five years for agricultural purposes and for mineral purposes were authorized to be made with the approval of the Secretary of the Interior and not otherwise.

Any agreement or lease of any kind or character violative of the provision of the section is declared absolutely void, not susceptible of ratification in any matter and no rule of estoppel shall ever prevent the assertion of its invalidity.

It has been held, construing this and similar sections of other allotment agreements that one or more leases may be made for the term singular or in the aggregate for not exceeding five years, and that a lease may be made notwithstanding the existence of a prior lease, provided the time for which it runs does not, added to that of the outstanding lease, exceed the five year period.¹

It has also been held that the Secretary's approval under this section does not render valid the lease of the lands of a minor allottee where the same was not authorized by the proper court in the exercise of its probate jurisdiction.²

§ 208. Leases for agricultural, grazing and mineral purposes—Choctaw and Chickasaw Nations.—Under the original Atoka Agreement (Act June 28, 1898, c. 517, 30 Stat. 507) no Choctaw or Chickasaw allottee was permitted to lease his allotment or any part thereof for a longer period than five years and then without the privilege of renewal. Every lease not evidenced by writing setting out specifically the terms thereof, or not recorded in the clerk's office of the United States court for the district in which the land is located, within three months after the time of its execution, is declared to be void and that the lessee shall acquire no rights whatever by an entry or holding thereunder, and no such lease is valid against the allottee unless providing him a reasonable compensation for the lands leased.³ No further legislation was had upon this subject except that of

¹ Whitham v. Lehmer, 22 Okl. 627, 98 Pac. 351; Scraper v. Boggs, 27 Okl. 715, 117 Pac. 193; Scherer v. Hulquist (Okl.) 130 Pac. 544; United States v. Abrams (C. C.) 181 Fed. 847; United States v. Abrams, 194 Fed. 83, 114 C. C. A. 160.

² Jennings v. Wood, 192 Fed. 507, 112 C. C. A. 657.

³ Chapman v. Siler, 30 Okl. 714, 120 Pac. 608; Tate v. Stone, 35 Okl. 369, 130 Pac. 296.

a temporary nature found in the Act of March 3, 1905, prior to the Act of April 26, 1906.

§ 209. Leases for agricultural, grazing and mineral purposes—Creek Nation.—Section 37 of the Original Creek Agreement, as amended by section 17 of the Supplemental Agreement, is in language substantially identical with that of the Cherokee Agreement. The language is so nearly identical as not to be susceptible of a different interpretation from that contained in the Cherokee Agreement. For a consideration of the provisions of such agreement, and its interpretation and effect, reference is made to a discussion under this same title applicable to Cherokee allottees.⁴

§ 210. Leases for agricultural, grazing and mineral purposes—Seminole Nation.—Under the original Seminole Agreement an allottee was authorized to lease his allotment for any period not exceeding six years; the contract therefor, to be executed in triplicate upon printed blanks provided by the tribal government, and the lease, before becoming effective, to be approved by the Principal Chief of the tribe and a copy filed in the office of the clerk of the United States court at Wewoka.

No lease for coal, mineral, coal oil or natural gas purposes in said nation was valid unless made with the tribal government by and with the consent of the allottee and approved by the Secretary of the Interior.

Leases in violation of the act or any of its provisions are declared void. Upon discovery of coal, mineral coal oil or natural gas on an allotment one half of the royalty therefrom is paid to the allottee and the remaining half to the tribal government until its extinguishment.⁵

§ 211. Leases by full-blood allottees of the Five Civilized Tribes for agricultural purposes under the Act of April

⁴ See authorities cited to section 207; also, *Muskogee Land Co. v. Mullins*, 165 Fed. 179, 91 C. C. A. 213, 16 Ann. Cas. 387; *Moore v. Sawyer* (C. C.) 167 Fed. 826.

⁵ *Stout v. Simpson*, 34 Okl. 129, 124 Pac. 754.

26, 1906.—Under the provisions of section 19 of the Act of April 26, 1906, full-blood Indians were authorized to lease lands other than homesteads for more than one year under such rules and regulations as might be prescribed by the Secretary of the Interior.

Leases of full-blood homesteads were permitted in the case of inability of the full-blood owner, on account of infirmity or age, to work or farm the same. Such leases, however, to be upon authority of the Secretary of the Interior and under such rules or regulations as he might prescribe. This provision, probably, had reference to agricultural leases only.

§ 212. Leases of Choctaw and Chickasaw allottees for all purposes as affected by section 20 of the Act of April 26, 1906.—Section 20 of the Act of April 26, 1906, requires all leases and rental contracts, except those not exceeding one year for agricultural purposes, for lands other than homesteads of full-blood allottees of all five of the tribes to be in writing and subject to approval by the Secretary of the Interior, and declares such leases to be absolutely void and of no effect whatever without such approval.

This provision uses the term "lease" in its generic sense, and it was probably intended to include all character of leases, whether for agricultural, grazing or mineral purposes.⁶

The leases made under this section are required to be recorded in conformity with the law applicable to the recording of the instruments affecting real estate in force in the Indian Territory. Under this section the Secretary of the Interior is not authorized to make leases, but simply to approve or disapprove the same.⁷

Leases of the lands of minors and incompetents, as authorized by this section, can be made only on order of the

⁶ *United States v. Comet Oil & Gas Co.* (C. C.) 187 Fed. 674.

⁷ *Jennings v. Wood*, 192 Fed. 507, 112 C. C. A. 657; *Davis v. Selby Oil & Gas Co.*, 35 Okl. 254, 128 Pac. 1083; *Scott v. Signal Oil Co.* (Okl.) 128 Pac. 694; *Cowles v. Lee*, 35 Okl. 159, 128 Pac. 688.

proper court, and the Secretary's approval is not necessary to their validity.⁸ If the lessor is an adult full blood, the Secretary's approval is required. If he is a minor, the authority of the county court to make the lease is substituted therefor.

§ 213. Leases for agricultural purposes as affected by the Act of May 27, 1908.—Section 2 of the Act of May 27, 1908, provides that all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order and the proper probate court if a minor or incompetent, for a period not to exceed five years without the privilege of renewal.

Leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years may be made with the approval of the Secretary of the Interior under rules and regulations prescribed by him, and not otherwise.

To summarize the provisions of this section, if the lands are alienable they may be leased by the owner without supervision of any character as a matter of course. If they are inalienable, and not the homestead or a part thereof, they may be leased for five years or less by adults without the Secretary's approval but with the approval of the court as to minors; in each case without the privilege of renewal.

Restricted homesteads may be leased for one year without the approval of the Secretary, but leases of restricted homesteads for more than a year, and leases of restricted lands other than homesteads for a period of more than five years, and leases of all restricted lands for oil, gas or other

⁸ *Morrison v. Burnette*, 154 Fed. 617, 83 C. O. A. 391; *Kolachny v. Galbreath*, 26 Okl. 772, 110 Pac. 902, 38 L. R. A. (N. S.) 451; *Cowles v. Lee*, 35 Okl. 159, 128 Pac. 688; *Jennings v. Wood*, 192 Fed. 507, 112 C. O. A. 657.

mineral purposes can be made by adults only with the approval of the Secretary of the Interior under such rules and regulations as he may prescribe.

A lease, being an alienation, can be made only where lands are alienable or where authorized by law as to those cases in which the lands are inalienable. The apparent purpose of this act was to harmonize the varying provisions of different allotment agreements and of the Act of April 26, 1906, and thereby prescribe a uniform rule for all the tribes.

There seems to be grave doubt as to whether the proviso to section 2 relates to allotted restricted lands only or whether it is applicable to inherited restricted lands. For a discussion of this subject see the next section.

§ 214. Oil and gas—Leases for under Act of May 27, 1908.—Leases for oil and gas purposes were discussed in a general way under the title of leases for agricultural, mining, etc., purposes. The authority to lease allotted and inherited lands for oil and gas purposes under the Act of May 27, 1908, is of such importance as to justify a separate consideration thereof.

Section 2 of the Act of May 27, 1908, regulating the leasing of restricted lands for oil, gas and other mining purposes, is as follows: "That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: *Provided*, that leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and

not otherwise: *And provided further*, that the jurisdiction of the probate courts of the state of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years."

Section 3 of said act provides: "That no oil, gas, or other mineral lease entered into by any of said allottees prior to the removal of restrictions requiring the approval of the Secretary of the Interior shall be rendered invalid by this act, but the same shall be subject to the approval of the Secretary of the Interior as if this act had not been passed: *Provided*, that the owner or owners of any allotted land from which restrictions are removed by this act, or have been removed by previous acts of Congress, or by the Secretary of the Interior, or may hereafter be removed under and by authority of any act of Congress, shall have the power to cancel and annul any oil, gas, or mineral lease on said land whenever the owner or owners of said land and the owner or owners of the lease thereon agree in writing to terminate said lease and file with the Secretary of the Interior, or his designated agent, a true copy of the agreement in writing canceling said lease, which said agreement shall be executed and acknowledged by the parties thereto in the manner required by the laws of Oklahoma for the execution and acknowledgment of deeds, and the same shall be recorded in the county where the land is situate."

It will be observed that by the proviso to section 2, leases of *restricted* lands for oil, gas or other mining purposes may be made with the approval of the Secretary of the Interior under rules and regulations provided by him, and not otherwise. To what class of lands do the words "restricted lands" refer? They are used in a section dealing with allotted lands. Is the Secretary's approval required only where leases are made of restricted allotted lands, or is approval required of leases of inherited restricted lands? Or

dinarily the proviso "restricted lands" would be construed as relating to that class of lands being dealt with in the section of which it is a part.

Section 9 of said act provides that death of any allottee shall operate to remove all restrictions upon the alienation of such allottee's land, but contains a proviso requiring conveyances of the interest of full-blood heirs to be approved by the county court having jurisdiction, and a second proviso that where a member of the tribe of one-half or more Indian blood dies leaving issue surviving born since March 4, 1906, the homestead of such deceased allottee shall remain inalienable unless restrictions against alienation are removed therefrom by the Secretary of the Interior, until April 26, 1931, or during the lifetime of such issue.

Lands as to which the act in plain and specific language says restrictions are removed cannot properly be regarded as restricted lands. The term "restricted lands," as used in section 2 of said act, properly applies to homesteads of allottees enrolled as mixed-blood Indians, having half or more of Indian blood, and all allotted lands of enrolled full bloods and enrolled mixed bloods of three-fourths or more Indian blood, and inherited homesteads where the ancestor of one-half or more Indian blood leaves surviving issue born since March 4, 1906. If this is a correct interpretation of the act, leases for oil and gas purposes of allotted Indian lands are required to be approved by the Secretary of the Interior where such lands consist of the homestead of allottees enrolled as mixed-blood Indians having half or more than half Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full bloods and enrolled mixed bloods of three-fourths or more Indian blood, including minors of such degree of blood, and inherited homesteads inherited from ancestors of one-half or more Indian blood leaving issue born since March 4, 1906.

Under this interpretation leases for oil and gas purposes of inherited lands may be made without the approval of

the Secretary of the Interior in all cases except where the ancestor was of one-half or more Indian blood and left surviving him issue born subsequent to March 4, 1906.

Where the ancestor is of less than half Indian blood and the heir is of less than the full blood, the lands descend free from restrictions on alienation and may be leased for oil and gas purposes without the approval of either the Secretary of Interior or the county court.

Where the heir is a full blood and the ancestor of less than half Indian blood, or where no issue is left surviving born subsequent to March 4, 1906, a lease for oil, gas or other mining purposes is valid when approved by the county court having jurisdiction of the estate of the deceased allottee. However, the Department of the Interior insists that where the death occurred prior to May 27, 1908, following the opinion of the Attorney General of August 17, 1909, the lease must be upon the departmental form and approved by the Secretary before it becomes a valid and binding obligation.

Wherever, under the Act of May 27, 1908, the lease of an adult for oil or mining purposes is required to be approved by the Secretary of the Interior the lease of a guardian for such purposes must likewise be approved by the Secretary.

This interpretation would render the provisions of the statute relating to the leasing of oil and gas lands in harmony with those relating to the conveyance of such lands. Wherever a removal of restrictions or approval of the Secretary of the Interior is required to the conveyance of allotted and inherited lands, it would be required to the making of an oil or gas lease; and wherever the county court's approval is required of the conveyance of inherited lands a lease for oil and gas purposes would be valid where so approved. There is another possible interpretation of the act, however, for a consideration of which see the next section.

§ 215. Oil and gas—Leases for under Act of May 27, 1908.—While the interpretation suggested in the preceding section seems to be the more reasonable one, it is not the only possible interpretation thereof.

The words "restricted lands," used in section 2, may be held to apply to all inherited lands which do not descend wholly free from restrictions on alienation. It may be held that, notwithstanding section 9 of the act provides that death of the allottee shall operate to remove all restrictions on alienation, the proviso requiring a conveyance of inherited lands by full-blood heirs to be approved by the county court constitutes lands inherited by full-blood heirs restricted lands within the meaning of those words as used in section 2.

This is not believed to be the natural and reasonable interpretation of the act but is a possible interpretation thereof.

The act as interpreted by the Attorney General in 1909, and which interpretation has been followed by the Department of the Interior in the approval of the oil and gas leases, requires the Secretary's approval of oil and gas leases by full-blood allottees where the ancestor died prior to May 27, 1908. Many counsel, as a matter of precaution, have taken both departmental and commercial leases where the ancestor died prior to May 27, 1908. However, where the allottee died subsequent to May 27, 1908, the Department of the Interior holds that the jurisdiction is in the county court and that it is without authority to approve.

§ 216. Leases of allotted lands under section 3 of the Act of February 28, 1891.—The General Allotment Act of 1887 made no provision for renting or leasing the lands of allottees thereunder.

By section 3 of the Act of February 28, 1891, amending the General Allotment Act, allottees under said act, or any other act or treaty, are authorized, upon the approval of the Secretary of the Interior, and upon such terms and un-

der such regulations and conditions as he shall prescribe, to lease their allotments or a part thereof for a term not exceeding three years for farming or grazing, or ten years for mining purposes.

This act requires certain conditions to exist as a condition precedent to the Secretary of the Interior giving his permission to the leasing of such allotted lands.

His approval of a lease would be conclusive evidence of the existence of such conditions. This amendment is in the very broadest terms and applies to every allottee in the state of Oklahoma other than those of the Five Civilized Tribes, except in cases where special provision may have been made in the allotment agreement or by law.

Leases made under this agreement, but not approved by the Secretary of the Interior, are absolutely null and void.⁹

The form of lease prescribed by the Department of the Interior always contains a provision against assigning or subletting without the consent of the Secretary of the Interior, and it has been held that such an assignment or sublease without the approval of the Secretary of the Interior is absolutely void and passes no interest to the assignee or such lessee. This is but a reaffirmation of the well-established rule of law that a contract in contravention of a positive statute or valid rule or regulation made pursuant thereto is void.¹⁰

§ 216a. Leases by allottees of other than the Five Civilized Tribes and Osages for mineral purposes.—The Indian Appropriation Bill of March 3, 1909,¹¹ contains the following provision with reference to the leasing for mining

⁹ *Light v. Conoyer*, 10 Okl. 732, 63 Pac. 966; *Megreedy v. Macklin*, 12 Okl. 666, 73 Pac. 293; *Williams v. Steinmetz*, 16 Okl. 104, 82 Pac. 986; *Holden v. Lynn*, 30 Okl. 663, 120 Pac. 246, 38 L. R. A. (N. S.) 239; *Beck v. Flournoy Live Stock & Real Estate Co.*, 65 Fed. 30, 12 C. C. A. 497; *United States v. Flournoy Live Stock & Real Estate Co. (C. C.)* 69 Fed. 886; *United States v. Flournoy Live Stock & Real Estate Co. (C. C.)* 71 Fed. 576; *Mayes v. Cherokee Strip Live Stock Ass'n*, 58 Kan. 712, 51 Pac. 217.

¹⁰ *Burns v. Malone (Okl.)* 130 Pac. 279.

¹¹ 35 Stat. 781-783. c. 263.

purposes of allotted lands of other than the Five Civilized Tribes and Osages, to wit: "That all lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is hereby authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this paragraph into full force and effect."

This provision does not seem to be a limitation upon the authority to lease found in previous legislation. The terms of the statute do not purport to be exclusive. An allottee, or his heir, it would seem, may make a lease under any existing statute or may elect to lease under the provisions of this act.

The act also undoubtedly authorizes the leasing for mineral purposes, of all allotted lands of all Indians whether allottees or heirs except those of the Five Civilized Tribes and Osages, and regardless of whether or not, prior to this act, they were permitted to lease for mineral purposes, but subject to the approval of the Secretary of the Interior under such rules and regulations as he may prescribe.

§ 217. **Leases of allotted Indian lands held in trust under Act of June 25, 1910.**—Section 4 of the Act of June 25, 1910, authorizes any Indian allottee whose allotment is held under a trust patent to lease the same for a period not to exceed five years, subject to and in conformity with such rules and regulations as the Secretary of the Interior may prescribe, the proceeds of any such lease to be paid to the allottee or his heirs, or expended for his own benefit, under the supervision of the Secretary of the Interior. This section makes no reference to the amendment of February 28, 1891, authorizing, without approval of the Secretary of the Interior, the leasing of allotted lands for agricultural

purposes for five years and for mining purposes for ten years.

It is broader in its application than the amendment of 1891. It contains no repealing clause, and if the authority to lease for mining purpose found in the act of 1891 is repealed thereby it must be by implication.

It is perhaps a fair interpretation of section 4 of the Act of June 25, 1910, to say that it applies to agricultural and grazing leases only, and that it was not the purpose of Congress to repeal the authority contained in the act of 1891 to lease for ten years for mineral purposes with the approval of the Secretary of the Interior. No reference is made to the Act of March 3, 1909, authorizing leases for mining purposes on approval of the Secretary of the Interior, and perhaps for the same reason.

§ 218. Modoc—Leases for agricultural purposes.—Under section 5 of the Act of March 3, 1909,¹² allottees of the Modoc Tribe who elect not to sell their allotments and remove to the Klamath reservation, may lease their land for a period not to exceed five years; the parent or next of kin having the care or custody of a minor executing the lease for such minor. Leases thus made are not required to be approved by the Secretary of the Interior.

§ 219. Osage—Leases for agricultural purposes.—Section 7 of the Osage Allotment Agreement authorizes allottees of said tribe and their heirs to lease their lands for farming, grazing or other purposes but requires all leases for the benefit of the individual allottees of the tribe or their heirs to be approved by the Secretary of the Interior before becoming effective.

§ 220. Leases—Peoria, Kaskaskia, Piankasha, Wea and Western Miami.—Under the Act of March 2, 1889, providing for the allotment in severalty of the lands of the Confederated Peoria,¹³ each allottee is authorized to lease or rent his or her allotment for a period not exceeding three

¹² See section 1115.

¹³ See chapter 72.

years, the father to act for his minor children and the Chief for orphans of the tribe. This authority to lease was enlarged by the Indian Appropriation Act of March 3, 1897,¹⁴ a discussion of which is found in a subsequent section.

§ 221. **Leases by allottees of the Quapaw Agency.**—The Indian Appropriation Act of March 3, 1897,¹⁵ provides: "That the allottees of land within the limits of the Quapaw Agency, Indian Territory, are hereby authorized to lease their lands, or any part thereof, for a term not exceeding three years, for farming or grazing purposes, or ten years for mining or business purposes. And said allottees and their lessees and tenants shall have the right to employ such assistants, laborers, and help from time to time as they may deem necessary: Provided, That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or disability, any such allottee can not improve or manage his allotment properly and with benefit to himself, the same may be leased, in the discretion of the Secretary, upon such terms and conditions as shall be prescribed by him. All acts and parts of acts inconsistent with this are hereby repealed."

This act is applicable to all of the allottees in the Quapaw Agency, including the Ottawa, Confederated Peoria, Quapaw, Seneca, Shawnee and Wyandotte Tribes.

There is but one limitation upon the authority to lease for either grazing, mining or business purposes. That limitation is that the lease shall not be longer than three years for farming or grazing purposes or longer than ten years for mining or business purposes. The existence of an outstanding lease for a part of the ten years does not prevent the execution of a second lease for the remainder of said period.¹⁶

¹⁴ 30 Stat. 63-72, c. 3.

¹⁵ 30 Stat. 72, c. 3.

¹⁶ *United States v. Abrams* (C. C.) 181 Fed. 847; *United States v. Noble et al.*, 197 Fed. 292, 116 C. C. A. 654; *United States v. Wright*, 197 Fed. 297, 116 C. C. A. 659; *United States v. Abrams*, 194 Fed. 82, 114 C. C. A. 160.

CHAPTER 25

WILLS

- § 222. Wills—In general.
223. Wills—Authority to dispose of real estate by—In the Creek Nation.
224. Wills—Authority to dispose of real estate by—Cherokee, Chickasaw, Choctaw, Creek and Seminole Nations.
225. Wills—When authorized by section 23 of the Act of April 26, 1906.
226. Authority to devise restricted lands under the Act of May 27, 1908.
227. Wills—General Allotment Act, Amendment thereto and subsequent legislation.
228. Wills—Disposal of lands by Indians other than the Five Civilized Tribes.

§ 222. Wills—In general.—For a number of years following the allotment of lands in severalty to members of the Five Civilized Tribes, it was insisted that a will was not an alienation and that title to restricted lands might be passed thereby. It was urged that it was the death of the allottee that made the will effective, and therefore the title was passed to the devisee by operation of law and not by act of the party.

It is now, however, thoroughly established by judicial interpretation of the allotment agreements that a disposition by will is an alienation within the prohibition against alienation found in the several allotment agreements and allotment acts.¹

Allotted Indian lands and inherited allotted Indian lands can be disposed of by will only where alienable, or where specifically authorized by law. Lands which are alienable may be disposed of by will unless prohibited by law. The actual test of the right to dispose of allotted or inherited allotted Indian lands by will is the test of alienation. A few of the allotment agreements and statutes authorize

¹ Hayes v. Barringer, 168 Fed. 221, 93 C. C. A. 507; Coachman v. Sims (Okl.) 129 Pac. 845; Hooks v. Kennard, 28 Okl. 457, 114 Pac. 744; Taylor v. Parker, 33 Okl. 199, 126 Pac. 573; Rev. Laws 1910, § 8341.

the disposition of nonalienable lands by will, but usually only on the approval of the Secretary of the Interior.

§ 223. **Wills—Authority to dispose of real estate by—In the Creek Nation.**—The homestead of the Creek allottee, though inalienable, was made devisable by section 7 of the Original Creek Agreement and section 16 of the Supplemental Creek Agreement wherever such allottee had no issue born to him after the 25th day of May, 1901. If there was such issue the homestead was to remain, after the death of the allottee, for his or her use and support. In the absence of issue born after May 25, 1901, the allottee could dispose of his homestead by devise.² The manner of executing, attesting and probating such will was that prescribed by chapter 104 of Mansfield's Digest of the Statutes of Arkansas of 1884 in force in the Indian Territory.

§ 224. **Wills—Authority to dispose of real estate by—Cherokee, Chickasaw, Choctaw, Creek and Seminole Nations.**—Neither the Cherokee Agreement, the original or supplemental Choctaw and Chickasaw Agreements, nor the original or supplemental Seminole Agreements conferred any authority upon an allottee of either of said tribes to dispose of his inherited or allotted land by devise.

Under the original Creek Agreement, if the allottee left surviving him no child or children born after May 25, 1901, he was authorized to dispose of his homestead by will free from the limitations imposed in the Creek Allotment Agreement.

This authority to dispose of the homestead by will was reaffirmed by section 16 of the Creek Supplemental Agreement, which provided that, if any allottee of the Creek Nation had no issue living born to him after May 25, 1901, he might dispose of his homestead by will. Creek surplus lands were not subject to disposition by will prior to April 26, 1906, except where alienable. Authority was not con-

² In *re Brown's Estate*, 22 Okl. 216, 97 Pac. 613; *Coachman v. Sims* (Okl.) 129 Pac. 845.

ferred upon the allottees of the Cherokee, Choctaw, Chickasaw and Seminole Nations to dispose of their allotted or inherited lands or any part thereof by devise, where held subject to restrictions upon alienation, prior to April 26, 1906.

§ 225. **Wills**—When authorized by section 23 of the Act of April 26, 1906.—Section 23 of the Act of April 26, 1906, authorizes every Indian of lawful age and sound mind by last will and testament to bequeath all of his estate, real and personal, or any interest that he may have therein. This authorization contains a proviso that no will of a full-blood Indian devising real estate shall be valid if it disinherit the parent, wife, spouse, or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian Territory, or a United States commissioner. Wills, as applied to the disposition of the allotted and inherited lands of the Five Civilized Tribes, were uniformly held to be an alienation, and the disposition of property by will permissible only when it might be disposed of by deed or grant. This is the first general affirmative authority conferred upon members of the Five Civilized Tribes to dispose of property by will. That right existed independent of direct authority, where the lands were held free from restriction and subject to alienation.

The courts have not been called upon to define the meaning of the word "disinherited" in this connection. Whether a diversion of a part of the real estate of a full blood from the line of descent under the statute would be such a disinheritance as to invalidate a will within the purview of this section is not free from doubt. Undoubtedly a total diversion from the course of descent would be a disinheritance, so far as the property is diverted from one to whom it would have passed by descent to another to whom it would not have passed by descent. The question of a compliance with this statute and the procedure necessary to do so is considered, and a full-blood will sustained in a

recent decision by the Supreme Court of the state of Oklahoma.^a

§ 226. Authority to devise restricted lands under the Act of May 27, 1908.—Section 9 of the Act of May 27, 1908, authorizes every member of the Five Civilized Tribes of one-half or more Indian blood, who does not leave surviving him issue born since March 4, 1906, to dispose of his homestead by will free from all restrictions.

Section 23 of the Act of April 26, 1906, is, by section 8 of the Act of May 27, 1908, amended so as to read: "Every person of lawful age and sound mind may by last will and testament, devise and bequeath all of his estate, real and personal, and all interest therein: Provided That no will of a full-blood Indian devising real estate shall be valid if such last will and testament disinherits the parent, wife, spouse or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court in the Indian Territory or a United States commissioner, or a judge of the county court or state of Oklahoma," and as amended by section 8, made applicable by section 9 to all wills executed under that section.

The change affected by the Act of May 27, 1908, in the authority to devise, granted by Act of April 26, 1906, is to bring into the class of wills requiring the approval of the county court, those by persons of one-half or more of Indian blood and less than full bloods, and to exclude from those who are permitted to dispose of their homesteads by will, all that class who leave surviving issue born after March 4, 1906.

As to Creek homesteads the exclusion operated to extend the time from May 25, 1901, to March 4, 1906. Otherwise the application of the Act of May 27, 1908, and the procedure thereunder seems to be in accordance with that prescribed by the Act of April 26, 1906, except as above noted that the judge of the county court of the state of Oklahoma is substituted for the judge of the United States court in the In-

^a Procter v. Harrison, 84 Okl. 181, 125 Pac. 479.

dian Territory. Whether the judge of the United District Court for the Eastern District of Oklahoma, or a commissioner of that court, is authorized to approve a will, under the Act of May 27, 1908, seems to be an open question.

§ 227. Wills—General Allotment Act, amendment thereto and subsequent legislation.—Neither the General Allotment Act, nor any amendment thereto prior to June 25, 1910, nor any legislation supplemental thereto applicable to allotted Indian lands generally, conferred any authority upon allottees to dispose of allotted or inherited allotted Indian lands by will. The Act of June 25, 1910, in section 2, which is not applicable to allotted Indian lands in Oklahoma, provides that any Indian of the age of twenty-one years or over to whom an allotment has been or may be made shall have the right, prior to the expiration of the trust period and before the issue of a fee simple patent, to dispose of such allotment by will in accordance with such rules and regulations as may be prescribed by the Secretary of the Interior. It is provided, however, that no will so executed is valid or of any force or effect unless or until it has been approved by the Commissioner of Indian Affairs and the Secretary of the Interior.

Subsequent to June 25, 1910, an allottee, under the General Allotment Act or amendment thereto, may dispose of his allotted lands before the same become alienable, but only where the will so disposing of the same is approved by both the Commissioner of Indian Affairs and the Secretary of the Interior.

The authority of the Secretary of the Interior to control the disposition by will of allotted Indian lands is extended by the Act of February 4, 1913, to all restricted lands of all Indian tribes except the Five Civilized Tribes and Osages.⁴

Under this act the Secretary may approve the will either before or after the death of the testator, and may, within one year after his approval, for fraud in connection with the execution or procurement thereof cancel such approval, and

⁴ See sections 948a and 948b.

the property in that event shall descend to and be distributed in accordance with the laws of the state wherein the same is located.

§ 228. **Wills—Disposal of lands by Indians other than the Five Civilized Tribes.**—The Iowa and Sac and Fox Allotment Agreements provide that patents shall issue in the name of the allottees, which shall be of the legal effect and declare that the United States will hold the land allotted for twenty-five years in trust for the sole use and benefit of the allottee, or, in case of his or her decease, of his or her heirs or devisees, according to the laws of the state or territory where such estate is located, and at the end of the trust period will convey the same by patent to such allottee, his heirs or devisees, aforesaid, in fee, discharged from the trust and free from incumbrances.

While this provision is more in the nature of a recognition of than the grant of a right to an allottee to dispose of his allotted lands by will, it impliedly authorized him to do so.

There is express obligation on the part of the United States to convey at the expiration of the trust period the allotted land to the allottee, his heirs or devisees. The devisees seem to be upon an equal footing of right with the allottee and his heirs.

None of the allotment agreements with any of the other tribes in Oklahoma than the Five Civilized Tribes make any reference to the disposition of allotted or inherited lands by will. Such lands, therefore, could be disposed of by will only when alienable, or when authorized by subsequent legislation.

Under section 8 of the Act of April 18, 1912 (37 Stat. 86, c. 83), adult members of the Osage Tribe not mentally incompetent may dispose of their real estate from which restrictions as to alienation have not been removed by will in accordance with the laws of the state of Oklahoma, but such will must be approved by the Secretary of the Interior before it has any validity or is entitled to probate.

CHAPTER 26

DESCENT

- § 229. Descent of Indian lands in general.
- 230. Descent of lands of the allottees of the Five Civilized Tribes as affected by general conditions.
- 231. Descent of allotted Cherokee lands prior to April 28, 1904.
- 232. Descent of allotted lands in the Cherokee Nation subsequent to April 28, 1904.
- 233. Descent of allotted lands in the Cherokee Nation subsequent to November 16, 1907.
- 234. Descent of lands allotted to members of the Choctaw and Chickasaw Tribes prior to April 28, 1904.
- 235. Descent of allotted lands in the Choctaw and Chickasaw Nations subsequent to April 28, 1904, and prior to November 16, 1907.
- 236. Descent of allotted lands in the Choctaw and Chickasaw Nations subsequent to November 16, 1907.
- 237. Descent of lands allotted under Original Creek Agreement.
- 238. Descent under the Creek Supplemental Agreement.
- 239. Descent—Creek Nation subsequent to November 16, 1907.
- 240. Descent of lands allotted to Seminole allottees.
- 241. Descent of allotted Seminole lands subsequent to November 16, 1907.
- 242. Reversion of allotted lands in default of heirs—Section 21 of Act of April 26, 1906.

§ 229. Descent of Indian lands in general.—No more difficult questions arise out of allotment in severalty of Indian lands than those relating to the laws of descent and distribution. Early allotments to members of Indian tribes were carved out of Indian reservations, which were under the exclusive control of the United States, exercised through the Department of the Interior, and its representatives, and such reservations were as completely segregated from local state or territorial control as though they were located wholly without the boundaries of any state or territory. Business transactions could be had with the Indians on such reservations, and frequently with the allottees, only under such rules and regulations as might be made by the Secretary of the Interior, and under the supervision of an Indian agent. Transactions between members of such tribes

were controlled by tribal usages and customs. The reservations before allotment, and the allotted lands after allotment, were frequently occupied exclusively by members of the tribe and government employes.¹ Under these conditions a line of decisions grew up holding that the law of descent applicable to allotted Indian lands, in the absence of a specific statutory provision providing otherwise, was the custom and usage of the tribe, and not the law of the state within the boundaries of which the allotted lands were located. These customs were seldom evidenced by any matter of record, and were the subject of much controversy. To put an end to controversies of this kind, Congress, in providing its general scheme for the allotment of tribal lands, made the law of descent and partition of the state in which the lands are located applicable after the issuance of patent, which has been considered to be the first or trust patent. To complete the scheme the laws of the state of Kansas were made applicable to the descent of allotted Indian lands in the Quapaw reservation in the Indian Territory. This evidenced a congressional policy to get away from the uncertainty of tribal customs in the matter of descent, and to substitute therefor the law of descent of the state in which the lands are located. Uniformity and certainty as to the line of descent is accomplished by this change. With rare exceptions, in recent years, individual allotment agreements have either provided for the application of the provisions of the General Allotment Act to allotted lands or have prescribed what law of descent shall control.² The law prescribed has been, almost without

¹ *The Kansas Indians*, 5 Wall. 737, 18 L. Ed. 667.

² *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okl. 425, 126 Pac. 723; *In re House's Heirs*, 132 Wis. 212, 112 N. W. 27; *Reese v. Harlan*, 77 Neb. 485, 109 N. W. 762; *McCauley v. Tyndall*, 68 Neb. 685, 94 N. W. 813; *Porter v. Parker*, 68 Neb. 338, 94 N. W. 123; *Smith v. Smith*, 140 Wis. 599, 123 N. W. 146; *Nivens v. Nivens*, 4 Ind. T. 574, 76 S. W. 114; *Guyatt v. Kautz*, 41 Wash. 115, 83 Pac. 9; *Non-she-po v. Wa-win-ta*, 37 Or. 213, 62 Pac. 15, 82 Am. St. Rep. 749; *McBean v. McBean*, 37 Or. 195, 61 Pac. 418; *George v. Robb*, 4 Ind. T. 61, 64

exception, the law of descent of the state in which the lands are located. Notwithstanding this change in policy, the courts have been slow to apply the state law during the existence of tribal organization.³ They have been more or less inclined to follow the policy, adopted when there was nothing but Indian customs to apply, of determining the descent in accordance with such customs. The rule of determining descent according to Indian custom and usage has as its basis the application of the law and custom of the forum or jurisdiction in which the land is situated, and this seems to have furnished the real test upon which these decisions are grounded. Even on this basis there would be little reason for applying the divers uncertain and conflicting Indian customs and laws in determining the descent of allotted Indian lands in the state of Oklahoma.

§ 230. Descent of lands of the allottees of the Five Civilized Tribes as affected by general conditions.—On May 2, 1890, Congress provided a temporary government for the territory of Oklahoma and enlarged the jurisdiction of the United States court in the Indian Territory.⁴ By section 31 of this act certain general laws of the state of Arkansas, in force at the close of the General Assembly of that state of 1883, as published in a volume known as Mansfield's Di-

S. W. 615; *Engleman v. Cable*, 4 Ind. T. 336, 69 S. W. 894; *In re Poff's Guardianship*, 7 Ind. T. 59, 103 S. W. 765; *Hayes v. Barringer*, 7 Ind. T. 697, 104 S. W. 937; *Conway v. United States (C. C.)* 149 Fed. 261; *Beam v. United States*, 162 Fed. 260, 89 C. C. A. 240.

³ *Jones v. Meehan*, 175 U. S. 1-29, 20 Sup. Ct. 1, 44 L. Ed. 49; *United States ex rel. Davis v. Shanks*, 15 Minn. 369 (Gil. 302); *Waupe Mamqua v. Aldrich*, 28 Fed. 489; *Brown v. Steele*, 23 Kan. 672; *Richardville v. Thorpe (C. C.)* 28 Fed. 52; *Hatch v. Luckman*, 64 Misc. Rep. 508, 118 N. Y. Supp. 689; *Terrance v. Crowley*, 62 Misc. Rep. 138, 116 N. Y. Supp. 417; *O'Brien v. Bugbee*, 46 Kan. 1, 26 Pac. 428; *Hannon v. Taylor*, 57 Kan. 1, 45 Pac. 51; *Conway v. United States (C. C.)* 149 Fed. 261; *Meeker v. Kaelin (C. C.)* 173 Fed. 216; *Sloan v. United States (C. C.)* 118 Fed. 283; *Davison v. Gibson (C. C.)* 56 Fed. 443; *Little Bill v. Swanson*, 64 Wash. 650, 117 Pac. 481.

⁴ 26 Stat. 81, c. 182; Ind. T. Ann. St. 1899, c. 2.

gest of the Statutes of Arkansas of 1884, where not locally inapplicable, or in conflict with the provisions of said act, or with any law of the Congress relating to the subjects especially mentioned in said section 31, were extended over and put in force in the Indian Territory. Then followed an enumeration of the various chapters of the Arkansas Code, with few exceptions, including chapter 49, "Descent and Distribution." It was further provided that said act should not operate to deprive the courts of the Five Civilized Tribes of jurisdiction over controversies solely between members of said tribes, or to punish members of the tribes, respectively, for violation of their criminal laws, where not in conflict with the laws of the United States.⁵

The Indian Appropriation Act of June 7, 1897, contained a proviso⁶ that on and after January 1, 1898, the United States courts of the said territory shall have original and exclusive jurisdiction and authority to try and determine all civil cases in law and equity, thereafter instituted, and all criminal causes for the punishment of any offense committed after January 1, 1898, by any person in said territory, and the United States commissioners in said territory shall have and exercise the power and jurisdiction already conferred upon them by the existing laws of the United States as respects all persons and property in said territory, and the laws of the United States and of the state of Arkansas in force in said territory shall apply to all persons therein, irrespective of race, such courts exercising the jurisdiction thereof as now conferred upon them in the trial of like cases, and any citizen of any one of said tribes, otherwise qualified, who can speak and understand the English language, may serve as a juror in any of said courts.

On June 28, 1898, the President approved an act entitled

⁵ *Helliker-Jarvis Seminole Co. v. Lincoln*, 33 Okl. 425, 126 Pac. 723; *Armstrong v. Wood* (C. C.) 195 Fed. 137; *McAllaster v. Edgerton*, 3 Ind. T. 704, 64 S. W. 583; *Nivens v. Nivens*, 4 Ind. T. 30, 64 S. W. 604; *George v. Robb*, 4 Ind. T. 61, 64 S. W. 615.

⁶ See section 362.

"An act for the protection of the people of the Indian Territory, and other purposes," section 26 of which is as follows: "That on and after the passage of this act the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory." Section 28 of said act provides: "That on the 1st day of July, eighteen hundred and ninety-eight, all tribal courts in the Indian Territory shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and all civil and criminal cases then pending in any court shall be transferred to the United States court in said territory by filing with the clerk of the court the original papers in the suit: Provided, That this section shall not be enforced as to the Chickasaw, Choctaw and Creek Tribes or Nations until the 1st day of October, eighteen hundred and ninety-eight."

Section 29 of said act, which is a part of the Atoka Agreement, accepted by the Choctaw and Chickasaw Tribes, provides: "that the United States courts now existing, or that may hereafter be created, in the Indian Territory shall have exclusive jurisdiction of all controversies growing out of the title, ownership, occupation, possession, or use of real estate, coal and asphalt, in the territory, occupied by the Choctaw and Chickasaw Tribes," and of certain criminal offenses, though committed by one member of the tribe against another, or by a member of the tribe against the Choctaw and Chickasaw governments.

It was agreed, in view of the modified legislative authority and judicial jurisdiction, that the tribal governments, for the purpose of carrying out the requirements of the agreement, should be continued for a period of eight years from the 4th day of March, 1898.

The original Creek Agreement provided that the Creek tribal government should expire March 4, 1906, and that

nothing contained in the Creek Agreement should be construed to revive or establish the Creek courts which had been abolished by former acts of Congress.

The Seminole Allotment Agreement provided, "The United States courts now existing, or that may hereafter be created in Indian Territory, shall have exclusive jurisdiction of all controversies growing out of the title, ownership, or occupation or use of real estate owned by the Seminoles, and to try all persons charged" with certain criminal offenses, but that the courts of the Seminole Nation should retain such jurisdiction as they then had, except as transferred to the United States courts.

On April 28, 1904, the President approved an act providing for additional judges in the Indian Territory, and for other purposes, which is in part as follows: "All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said territory, whether Indian, freedman, or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlements of all estates of decedents, the guardianships of minors, and incompetents, whether Indians, freedmen, or otherwise."

On March 2, 1906, the existence of the tribal governments was continued in force for all purposes, under existing laws, until the property of the tribes and the proceeds thereof should be distributed among the members of the tribes, unless otherwise provided by law.

It will be noted that there was no repeal, either directly or by necessary implication, of section 26 of the Act of June 28, 1898, prohibiting the enforcement of any of the laws of the various tribes or nations in any of the courts of the United States in the Indian Territory. This act, of course, did not undertake to divest rights that had become vested under the laws of either of the tribes prior to said date.

"An act for the protection of the people of the Indian Territory, and other purposes," section 26 of which is as follows: "That on and after the passage of this act the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory." Section 28 of said act provides: "That on the 1st day of July, eighteen hundred and ninety-eight, all tribal courts in the Indian Territory shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and all civil and criminal cases then pending in any court shall be transferred to the United States court in said territory by filing with the clerk of the court the original papers in the suit: Provided, That this section shall not be enforced as to the Chickasaw, Choctaw and Creek Tribes or Nations until the 1st day of October, eighteen hundred and ninety-eight."

Section 29 of said act, which is a part of the Atoka Agreement, accepted by the Choctaw and Chickasaw Tribes, provides: "that the United States courts now existing, or that may hereafter be created, in the Indian Territory shall have exclusive jurisdiction of all controversies growing out of the title, ownership, occupation, possession, or use of real estate, coal and asphalt, in the territory, occupied by the Choctaw and Chickasaw Tribes," and of certain criminal offenses, though committed by one member of the tribe against another, or by a member of the tribe against the Choctaw and Chickasaw governments.

It was agreed, in view of the modified legislative authority and judicial jurisdiction, that the tribal governments, for the purpose of carrying out the requirements of the agreement, should be continued for a period of eight years from the 4th day of March, 1898.

The original Creek Agreement provided that the Creek tribal government should expire March 4, 1906, and that

nothing contained in the Creek Agreement should be construed to revive or establish the Creek courts which had been abolished by former acts of Congress.

The Seminole Allotment Agreement provided, "The United States courts now existing, or that may hereafter be created in Indian Territory, shall have exclusive jurisdiction of all controversies growing out of the title, ownership, or occupation or use of real estate owned by the Seminoles, and to try all persons charged" with certain criminal offenses, but that the courts of the Seminole Nation should retain such jurisdiction as they then had, except as transferred to the United States courts.

On April 28, 1904, the President approved an act providing for additional judges in the Indian Territory, and for other purposes, which is in part as follows: "All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said territory, whether Indian, freedman, or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlements of all estates of decedents, the guardianships of minors, and incompetents, whether Indians, freedmen, or otherwise."

On March 2, 1906, the existence of the tribal governments was continued in force for all purposes, under existing laws, until the property of the tribes and the proceeds thereof should be distributed among the members of the tribes, unless otherwise provided by law.

It will be noted that there was no repeal, either directly or by necessary implication, of section 26 of the Act of June 28, 1898, prohibiting the enforcement of any of the laws of the various tribes or nations in any of the courts of the United States in the Indian Territory. This act, of course, did not undertake to divest rights that had become vested under the laws of either of the tribes prior to said date.

The provisions in the various agreements, in so far as they relate to the descent of allotted lands of either of said tribes, will be considered in connection with the law of descent of such tribes.

§ 231. Descent of allotted Cherokee lands prior to April 28, 1904.—The tribal courts of the Cherokee Nation having been abolished by section 28 of the Act of June 28, 1898, and United States courts in the Indian Territory having been prohibited by section 26 of said act from enforcing, either at law or in equity, the laws of the Cherokee Nation, it would seem that only the laws of the United States in force in the Indian Territory could be applicable to the descent of allotted Cherokee lands.

By section 20 of the Cherokee Agreement, where the name of any person appeared upon the membership roll as prepared by the Secretary of the Interior, and such person had died subsequent to the 1st day of September, 1902, and before receiving his allotment, the lands to which he would have been entitled, if living, were allotted in his name, and such lands, together with his proportionate share of the tribal property, descended to his heirs according to the laws of descent and distribution as provided in chapter 49 of Mansfield's Digest of the Statutes of Arkansas. The Cherokee Allotment Agreement does not disclose on its face the reason for making the Arkansas statute applicable to lands allotted in the name of the deceased member without making said statute applicable to lands allotted in the name of a living member. It is probable that it was assumed that allotted lands would descend under the law of descent in force in the Indian Territory, but that such statute would not apply to the transmission of tribal lands, when segregated in allotment, unless specifically made applicable thereto. The doubt as to whether such statutes, in the absence of a specific provision, would operate upon an undivided interest in tribal lands, probably accounts for the provision

making section 49 of Mansfield's Digest applicable to the particular interest dealt with by section 20 of said agreement.

The Arkansas statute of descent and distribution was the law of the forum, the only law enforceable in any existing court, and the re-establishment of the Cherokee courts was not contemplated. It therefore may be fairly assumed that the Cherokee statute of descent never applied to allotted lands in the Cherokee Nation. Said statute, however, is reproduced in part II hereof for consideration, if it should be held to apply.

§ 232. Descent of allotted lands in the Cherokee Nation subsequent to April 28, 1904.—Though it seems reasonably certain that all allotted lands in the Cherokee Nation descended in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas of 1884, whatever doubt, if any there may have been, was relieved by the direct extension of said chapter so as to make the same applicable to both the person and estates of members of the Five Civilized Tribes. If this statute was in force in the Cherokee Nation prior to April 28, 1904, the law was not changed thereby. If it was in force prior to said date only as to lands allotted in the name of the deceased member, it substituted the Arkansas law of descent for that of the Cherokee Tribe, as to lands allotted to living members of the tribe.

§ 233. Descent of allotted lands in the Cherokee Nation subsequent to November 16, 1907.—On the 16th day of November, 1907, the President of the United States issued his proclamation admitting Oklahoma into the sisterhood of states. By the terms of the Enabling Act, and under the language of the Constitution of the state, the laws of the territory of Oklahoma, not locally inapplicable or in conflict with the Constitution, were extended over the state of Oklahoma. The descent of property is a matter peculiarly within the jurisdiction of the state, and, though it is possible that, under the reservation in the Enabling Act, Congress has power to legislate upon this subject, it has shown no

disposition to do so, otherwise than to require in the Enabling Act an extension of the laws of Oklahoma Territory over the state of Oklahoma. Section 21 of the Enabling Act, making said requirement, is as follows: "and all laws in force in the territory of Oklahoma at the time of the admission of said state into the Union shall be in force throughout said state, except as modified or changed by this act or by the Constitution of the state, and the laws of the United States not locally inapplicable shall have the same force within said state as elsewhere within the United States." This language is unequivocal. There are only two exceptions to the applicability of the Oklahoma Territory laws: One where modified or changed by the Enabling Act; and the other where modified or changed by the Constitution.⁷ Neither the Constitution nor the Enabling Act made any provision whatever for continuing any line of descent anywhere within the state of Oklahoma, other than the law of descent of the territory of Oklahoma. There was no special law of descent in force in the Cherokee Nation, and there is no question of the repeal of a special by a general law involved.

§ 234. Descent of lands allotted to members of the Choctaw and Chickasaw Tribes prior to April 28, 1904.—Section 22 of the Choctaw-Chickasaw Supplemental Agreement provides that lands allotted in the name of deceased members of said tribe shall descend according to the laws of descent and distribution as found in chapter 49, Mansfield's Digest of the Statutes of Arkansas of 1884. There is no provision whatever in either of the treaties or in the laws of the Unit-

⁷ Winslow v. France, 20 Okl. 305, 94 Pac. 689; State ex rel. Edwards v. Millar, 21 Okl. 448, 96 Pac. 747; Ex parte Thomas, 21 Okl. 770, 97 Pac. 260, 20 L. R. A. (N. S.) 1007, 17 Ann. Cas. 566; Campbell v. State ex rel. Brett, 23 Okl. 109, 99 Pac. 778; Bowman v. Bilby, 24 Okl. 736, 104 Pac. 1078; Grennan v. Carson, 25 Okl. 730, 107 Pac. 925; North v. McMahan, 26 Okl. 502, 110 Pac. 1115; Lynn v. Jackson, 26 Okl. 852, 110 Pac. 727; City of Pawhuska v. Pawhuska Oil & Gas Co., 28 Okl. 563, 115 Pac. 353; St. Louis & S. F. Ry. Co. v. Dickerson, 29 Okl. 386, 118 Pac. 140; Fisher v. Gossett (Okl.) 128 Pac. 293.

ed States for the descent and distribution of property allotted to a member of the tribe who dies subsequent to the selection of his allotment.

Section 26 of the Act of June 28, 1898, provides that on and after the passage of said act the laws of the various tribes or nations shall not be enforced at law or in equity by the courts of the United States in the Indian Territory.

By section 28 of the same agreement tribal courts were abolished, but with a reservation in section 29 of said act that has been construed as a restoration to those courts of a limited jurisdiction. Said agreement, however, contained a specific provision that the United States courts in the Indian Territory should have exclusive jurisdiction of all controversies growing out of the title, ownership, occupation, possession or use of real estate, coal and asphalt, in the territory occupied by the Choctaw and Chickasaw Tribes.⁸

Under this statute the United States courts in the Indian Territory undoubtedly had the right to try and adjudge the title to allotted lands where the controversy was as to who took the same by inheritance, and necessarily what statute of descent controlled. The tribal courts had no such jurisdiction because the jurisdiction of the United States courts in the Indian Territory was made exclusive.

The prohibition against the enforcement of tribal laws in the courts of the United States, under the conditions mentioned, was equivalent to a revocation or repeal of such laws and a declaration that they should not thereafter control in any matter to be adjudicated in the courts of the United States.

The special provision applying the Arkansas statute of descent to the lands allotted in the name of an ancestor was probably made because of the assumption that the Arkansas law of descent did not apply to tribal property, and, without special provision therefor, would not operate as a

⁸ In re Poff's Guardianship, 7 Ind. T. 59, 103 S. W. 765; Hayes v. Barringer, 7 Ind. T. 697, 104 S. W. 937; Elliott v. Garvin, 7 Ind. T. 679, 104 S. W. 878; Id., 166 Fed. 278, 92 C. C. A. 196.

vehicle for the transfer and conversion of the tribal title of the ancestor to the individual title of the allottee and heir.

§ 235. Descent of allotted lands in the Choctaw and Chickasaw Nations subsequent to April 28, 1904, and prior to November 16, 1907.—Although it is probable that the descent of all allotted lands of Choctaw and Chickasaw allottees was in accordance with Mansfield's Digest of the Statutes of Arkansas of 1884, whatever uncertainty there was in reference to this matter was relieved by Act April 28, 1904, extending said laws to the persons and estates in the Indian Territory, whether Indian, freedman, or otherwise. This statute was, perhaps, designed to take away from the Indian courts the limited probate jurisdiction they were exercising, and to set at rest any possible question as to what law of descent should be applied to Indian estates.

§ 236. Descent of allotted lands in the Choctaw and Chickasaw Nations subsequent to November 16, 1907.—There were no special laws regulating the matter of descent applicable to allotted lands in the Choctaw and Chickasaw Nations, and the extension in general terms of the laws of the territory of Oklahoma over the state of Oklahoma by the terms of the Enabling Act and the Constitution, operated to substitute the laws of descent and distribution of the territory of Oklahoma in the Choctaw and Chickasaw Nations for the laws of descent of Arkansas as evidenced by Mansfield's Digest of the Statutes of Arkansas of 1884.

§ 237. Descent of lands allotted under Original Creek Agreement.—Under sections 6 and 28 of the Original Creek Agreement, allotted lands, whether to a living member or in the name of a deceased member, descend according to the law of descent and distribution of the Creek Nation. The language of the agreement is clear so far as it relates to the lands allotted to and in the name of a deceased member of the tribe, and so far as the homestead allotment is concerned. While the language as applied to the surplus

allotment is somewhat involved in doubt, the Supreme Court of the state has held that the Creek law of descent applied and controlled the descent of the Creek surplus allotment under the Original Creek Agreement.⁹

At the time of the adoption of the Creek statute of descent there were current two compilations of the Creek laws. In the earlier days frequent controversies arose over which of these was adopted by the Creek Agreement. In 1912 the Supreme Court of the state held that inasmuch as the Creek statute of descent was put in force in the Creek Nation by an act of Congress, it was the duty of the court to take judicial knowledge of such statute, and that it was not necessary to either plead or prove the same.¹⁰ The case in which this rule was declared is now pending on writ of error in the Supreme Court of the United States.

The Creek statute of descent of which judicial knowledge was taken by the court is that found in the Perryman compilation of the laws of the Creek Nation of 1890.¹¹

It is not deemed advisable to consider in detail the interpretation and application of these statutes by the various courts, state and federal. A list of all cases in which the statute has been construed or applied will be found in the margin.¹²

⁹ *De Graffenreid v. Iowa Land & Trust Co.*, 20 Okl. 687, 95 Pac. 624; *Barnett v. Way*, 29 Okl. 780, 114 Pac. 418.

¹⁰ *Reynolds v. Fewel*, 34 Okl. 112, 124 Pac. 623; *Woodward v. De Graffenried* (Okl.) 131 Pac. 162.

¹¹ The law of descent as found in this statute, with other pertinent provisions, is reproduced in full in part II.

¹² *De Graffenreid v. Iowa Land & Trust Co.*, 20 Okl. 687, 95 Pac. 624; *Bodle v. Shoenfelt*, 22 Okl. 94, 97 Pac. 556; *Irving v. Diamond*, 23 Okl. 325, 100 Pac. 557; *Hooks v. Kennard*, 28 Okl. 457, 114 Pac. 747; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338; *Barnett v. Way*, 29 Okl. 780, 119 Pac. 418; *Divine v. Harmon*, 30 Okl. 820, 121 Pac. 219; *Morley v. Fewel*, 32 Okl. 452, 122 Pac. 700; *Brady v. Sizemore*, 33 Okl. 169, 124 Pac. 615; *Shellenbarger v. Fewel*, 34 Okl. 79, 124 Pac. 617; *Reynolds v. Fewel*, 34 Okl. 112, 124 Pac. 623; *Bilby v. Brown*, 34 Okl. 738, 126 Pac. 1024; *Oklahoma Land Co. v. Thomas*, 34 Okl. 681, 127 Pac. 8; *Ground v. Dingman*, 33 Okl. 760, 127 Pac. 1078; *Shulthis v. McDougal*, 170 Fed. 529, 95 C. C. A. 615; *Woodward*

§ 238. Descent under the Creek Supplemental Agreement.—The law of descent and distribution as found in the Original Creek Agreement, affecting allotted lands of members of the Creek Tribe, was materially modified by the Creek Supplemental Agreement. Section 6 of this agreement repeals the provision of the original Creek Agreement and provides that the descent and distribution of land and money provided for by said act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas, now in force in the Indian Territory. It is further provided, however, that only citizens of the Creek Nation, and their descendants, inherit lands of the Creek Nation, with a further proviso that, if there be no person of Creek citizenship to take the descent, then it shall go to the non-citizen heirs under chapter 49 of Mansfield's Digest.

The Indian Appropriation Bill, approved May 27, 1902, also contained a provision repealing that part of the Original Agreement prescribing descent according to the Creek laws and providing that the descent and distribution of lands and money provided for in said act should be in accordance with the provisions of chapter 49 of Mansfield's Digest of the Statutes of Arkansas, in force in the Indian Territory. A joint resolution was passed on May 27, 1902, making the Indian Appropriation Bill effective on and after July 1, 1902. It would seem, therefore, notwithstanding the provision in the Indian Appropriation Bill repealing the Creek law of descent and applying the Arkansas law of descent, it did not become effective until July 1, 1902.

The United States Court for the Eastern District of Oklahoma,¹⁸ after a careful consideration of the proviso limiting those who take by inheritance the lands of the Creek Nation to citizens of the Creek Nation, has interpreted the

v. De Graffenried (Okl.) 131 Pac. 162; *Armstrong v. Wood* (C. C.) 195 Fed. 137; *Reed v. Welty* (D. C.) 197 Fed. 419; *McKee v. Henry* (C. C. A.) 201 Fed. 74.

¹⁸ *Armstrong v. Wood* (C. C.) 195 Fed. 137.

same as applicable only to lands allotted in the name of a deceased member of the tribe; that is to say, the Creek citizen heir has no preference over the noncitizen heir as to lands allotted in the lifetime of the allottee, and the preference right is limited to lands which are tribal at the time of death, and which are allotted to a deceased member of the tribe, the title to which, upon allotment, vests in his heirs. The state courts have apparently not considered this interpretation of the statute. It is doubtful if the state Supreme Court has decided a case involving the law of descent which in actual results conflicts with the above interpretation.

A list of the cases construing the law of descent as prescribed by the Creek Supplemental Agreement is set out in the margin.¹⁴

§ 239. **Descent—Creek Nation subsequent to November 16, 1907.**—The law of descent in force in the Creek Nation at the incoming of statehood was that prescribed by section 6 of the Supplemental Creek Agreement, which is as follows: "The provisions of the act of Congress approved March 1, 1901,¹⁵ in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed and the descent and distribution of land and money provided for by said act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: Provided, That only citizens of the Creek Nation, male and female, and

¹⁴ De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624; In re Brown's Estate, 22 Okl. 216, 97 Pac. 613; Hooks v. Kennard, 28 Okl. 457, 114 Pac. 744; Lamb v. Baker, 27 Okl. 739, 117 Pac. 189; Hughes Land Co. v. Bailey, 30 Okl. 194, 120 Pac. 290; Brady v. Sizemore, 33 Okl. 169, 124 Pac. 615; Rentle v. McCoy, 35 Okl. 77, 128 Pac. 244; Washington v. Miller, 34 Okl. 259, 129 Pac. 58; Iowa Land & Trust Co. v. Dawson, 134 Pac. 39; Shulthis v. McDougal, 170 Fed. 529, 95 C. C. A. 615; Brann v. Bell (C. C.) 192 Fed. 427; Woodward v. De Graffenried, 131 Pac. 162; Armstrong v. Wood (C. C.) 195 Fed. 137; Reed v. Welty (D. C.) 197 Fed. 419; McKee v. Henry (C. C. A.) 201 Fed. 74.

¹⁵ 31 Stat. 861, c. 676.

their Creek descendants shall inherit lands of the Creek Nation: And provided further, That if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to noncitizen heirs in the order named in said chapter 49."

By section 8 of the Supplemental Creek Agreement the rule of descent prescribed in section 6 is made applicable to lands allotted in the name of a deceased member of the tribe.

What was the effect of the extension of the law of descent of the territory of Oklahoma over the state of Oklahoma, as applied to the descent of allotted Creek lands? Did the Oklahoma state law supercede section 6 of the Creek Agreement, and, if so, in whole or in part only?

Chapter 49 of Mansfield's Digest, except as modified by the proviso, was the general law of descent in force in the Indian Territory at the time of its application to Creek allottees by the Creek Supplemental Agreement.

The provision of the Creek Agreement giving citizens of the Creek Nation the preference to take by inheritance was special legislation applicable to the Creeks only. It is possible that the Arkansas statute of descent, as modified by this provision, would as a whole be treated as special legislation.

Special acts may be repealed by general acts as well as by special acts where the intention to repeal is manifest. There was no want of legislative power to accomplish the repeal of section 6 of the Supplemental Creek Agreement by the extension of the Oklahoma law of descent over the entire state. Congress, by the Enabling Act, required such extension to be made. It thereby not only consented to, but required, the repeal of such local legislation in force in the Indian Territory as might conflict with the laws of the territory extended over the state. That it was within the power of Congress and the people of the state of Oklahoma to substitute the Oklahoma law of descent for the existing

Creek law of descent is too clear for controversy. That it was the purpose of Congress, in requiring the extension of the territorial laws over the state, to repeal local legislation in conflict therewith, whether general or special, seems equally manifest.

If the Oklahoma territorial laws, as extended over the state, are held to be inoperative wherever in conflict with either a general or special law, a condition of uncertainty, conflict and diversity of laws will be brought about.

Congress seems to have construed the Enabling Act as applying the Oklahoma territorial law of descent to the allotted lands of each of the Five Civilized Tribes, inasmuch as it provided in section 9 of the Act of May 27, 1908, that the homestead of the allottees of the Five Civilized Tribes who left surviving no issue born since March 4, 1906, should descend to the heirs of such allottee "according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions. * * *"

If section 6 of the Supplemental Agreement continued in force after statehood, there is no reason why it is not yet in force, except as modified by section 9 of the Act of May 27, 1908, in which event the Creek homestead would descend under the Oklahoma statute, and the Creek surplus under the modified Arkansas statute.

Allotted or inherited lands acquired by purchase by any person, whether a member of the tribe or not, would descend in accordance with the Oklahoma statute of descent, the homestead of the allottee in accordance with the Oklahoma statute of descent, and the surplus in accordance with section 6 of the Creek Supplemental Agreement, if not superseded.

It does not seem probable that such a result could have been contemplated by Congress. Many of the most able lawyers in the Creek Nation are pronounced in the opinion that the extension of the territorial statutes over the state did not operate to supersede section 6 of the Creek Supple-

mental Agreement. A larger number, however, are of the opinion that section 6 of the Creek Supplemental Agreement was repealed at the incoming of statehood by the state statute.

A considerable number are of the opinion that the Oklahoma statute substituted the Arkansas statute, but subject to the preference rights in favor of Creek citizens.

It will require an authoritative judicial interpretation to relieve the uncertainty and establish a fixed rule of descent.

§ 240. Descent of lands allotted to Seminole allottees.—The original Seminole Agreement, which was entered into on the 6th day of December, 1897, made no provision whatever for the descent of allotted lands in the Seminole Nation. Jurisdiction, however, was conferred upon the United States court in the Indian Territory over all controversies growing out of the title, ownership, occupation or use of real estate owned by Seminoles. The second section of the Supplemental Seminole Agreement approved October 7, 1899, provides that if any member of the Seminole Tribe of Indians dies after December 31, 1899, the lands, money, and other property to which he would be entitled, if living, shall descend to his heirs who are Seminole citizens according to the laws of descent and distribution of the state of Arkansas and be allotted and distributed accordingly, provided that, in all cases where such property would descend to the parents under said laws, the same shall first go to the mother instead of the father, and then to the brothers and sisters and their heirs instead of the father.

In the making of all of the allotment agreements the United States was represented by the same Commission; and the reasons which induced the commissioners to make the provisions of the Arkansas statute control descent where the ancestor died previous to allotment in the Cherokee, Choctaw and Chickasaw Nations were those which controlled in the insertion of the above provisions in the Seminole Agreement.

There is no reason applicable to the allotted lands of either of the tribes why the line of descent of land allotted to a living member should be different from that allotted in the name of a deceased member. There is no reason why, if a Seminole allottee should have died after selecting a homestead and before selecting his surplus allotment, the homestead should have descended under the Seminole law to one set of heirs and the surplus allotment under the Arkansas law to another set of heirs; due regard being had for the prohibition against the enforcement of tribal laws, which, so far as the United States courts in the Indian Territory, and their successors, the courts of the state of Oklahoma, are concerned, effected a repeal of the tribal laws. The Arkansas law of descent should be held to apply to lands allotted to a living member of the tribe. This would not make the rule of descent entirely harmonious because of the modifications by the supplemental agreement of the rule of descent prescribed by the Arkansas statute in giving the mother, brothers and sisters, and their descendants, preference right over the father, where the lands were allotted in the name of a deceased member of the tribe. The Supreme Court of the state has held that chapter 49 of Mansfield's Digest of the Laws of Arkansas, entitled "Descent and Distribution," controls in the descent of lands allotted to a member of the Seminole Tribe of Indians who died on the 23d day of August, 1903, after receiving his allotment.¹⁶ This result seems to have been forecasted by an earlier decision of the same court.¹⁷ These decisions are sound in principle and should furnish a basis for the application of the general law of descent in the Seminole Nation.

For the effect of the Acts of June 7, 1897, June 28, 1898, and April 28, 1904, extending the Arkansas laws in force

¹⁶ *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okl. 425, 126 Pac. 723.

¹⁷ *Bruner v. Sanders*, 26 Okl. 673, 110 Pac. 730.

in the Indian Territory to the persons and estates of citizens and of freedmen as applied to lands allotted to living members of the tribe, reference is made to the discussion thereof as applicable to the Cherokees, Choctaws and Chickasaws. It is probable that the extension of said act in the general terms in which it was extended did not operate to repeal the provisions of the Supplemental Agreement giving to the mother, brothers and sisters preference right over the father in certain cases.¹⁸

§ 241. Descent of allotted Seminole lands subsequent to November 16, 1907.—The extension of the laws of the territory of Oklahoma over the state of Oklahoma at the incoming of statehood by the terms of the Enabling Act and Constitution of the state no doubt operated to supersede the law of descent applicable to lands allotted to living members of the tribe.

The allotment of the Seminole lands having been completed long prior to November 16, 1907, there was no occasion for the application of the special limitations upon the Arkansas statute of lands allotted in the name of a deceased member subsequent to statehood. No special act of Congress stood in the way of an extension of the Oklahoma Territory statutes of descent to allotted lands in the Seminole Nation. The general law of descent in force prior to statehood, in the Indian Territory, was superseded by the general law of descent in force in Oklahoma prior to statehood and extended over the entire state by the Enabling Act and Constitution.

While the courts of the state may enforce rights arising out of such exception, there is no occasion for its application after the completion of allotment, and no reason why the laws of the territory of Oklahoma should not be held to be as fully applicable to Seminole allottees as to other citizens of the state.

¹⁸ Washington v. Miller, 34 Okl. 259, 129 Pac. 58.

§ 242. Reversion of allotted lands in default of heirs—Section 21 of Act of April 26, 1906.—By section 21 of the Act of April 26, 1906, if an allottee of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes die intestate and without widow, heirs, or surviving spouse, and seised of any part of his allotment prior to the final distribution of tribal property, and such facts shall become known to the Secretary of the Interior, the lands allotted to such member revert to the tribe and are to be disposed of as surplus lands. If such a condition arises after the distribution of the tribal property, the land reverts to the state.

CHAPTER 27

DESCENT, DOWER AND CURTESY UNDER THE ARKANSAS STATUTES IN FORCE IN THE INDIAN TERRITORY

§ 243. Scope of this title.

244. Descent—Allotted lands of the Five Civilized Tribes—Whether an ancestral estate or a new acquisition.

245. Dower.

246. Curtesy—Prerequisite of.

247. Curtesy not a vested right.

§ 243. Scope of this title.—It is not the purpose to undertake to trace in full the rule of descent under chapter 49 of Mansfield's Digest of the Statutes of Arkansas extended over and put in force in the Indian Territory, and applicable at different times to the allotted lands of members of the Five Civilized Tribes, nor to enter into a general discussion of the subject of dower and curtesy, but to call attention to certain special features of these provisions as applicable to the extraordinary conditions existing in the Indian Territory during the time they were in force and applicable to the allotted lands of any one of the several tribes.

§ 244. Descent—Allotted lands of the Five Civilized Tribes—Whether an ancestral estate or a new acquisition.—Are lands of the allottees of the Five Civilized Tribes, after they pass upon death to their descendants, an ancestral estate or a new acquisition under the Arkansas statute of descent and distribution?

If the unconditional fee to the tribal lands had been in the members of the tribe, and allotment had meant only partition of an estate, the estate received by the allottee would have been ancestral. Such was not the case. The estate in the land held by a member previous to allotment was a mere right of possession and could be alienated only to a member of the tribe. The estate received by the allottee is an absolute fee simple, including the possibility of re-

version vested in the United States prior to allotment. The estate thus received by the allottee is a larger and more valuable one than his previous possessory right. He takes by deed or patent from the Governor or Principal Chief of his tribe, acting on behalf of the tribe and without reference to whether his father or mother or both be living or dead.

For nearly ten years it was practically the unanimous opinion of lawyers residing in the Eastern district of Oklahoma that the estate of the allottee is a new acquisition and not an ancestral estate. This was based upon uniform interpretation given to this statute by the Supreme Court of Arkansas under conditions somewhat similar, though not identical, to those in the Indian Territory.

About the time the bar regarded the matter as settled the Circuit Court of Appeals for the Eighth Circuit held the estate of an allottee of the Creek Nation to be ancestral, and not a new acquisition.¹ A review of this decision was sought in the Supreme Court of the United States, but the case was dismissed for want of jurisdiction.²

The Supreme Court of the state has very recently followed the construction given to the Arkansas statute of descent by the Circuit Court of Appeals for the Eighth, Circuit, holding the estate received by the allottee in allotment to be ancestral and not a new acquisition.³ The case involved the construction of the Arkansas statute of descent as applied to a full-blood Creek Indian who died July 12, 1905, after receiving her patent, intestate, leaving surviving her a husband, father, mother, sister and two brothers, all full-blood Creeks. The father, mother and husband joined in a conveyance, and the sister and brothers brought suit to recover the property and clear title thereto.

¹ *Shulthis v. McDougal*, 170 Fed. 529, 95 C. O. A. 615.

² *Shulthis v. McDougal*, 225 U. S. 561, 32 Sup. Ct. 704, 56 L. Ed. 1205.

³ *Pigeon v. Buck* (Okl.) 131 Pac. 1083.

After quoting from the opinion of the Circuit Court of Appeals in the Shulthis-McDougal Case the court concludes as follows: "Many titles to lands on the eastern side of this state have been acquired on the strength of this decision, and to such an extent that the same has become a rule of property there. * * *"

A writ of error has been sued out to have the judgment of the Supreme Court of the state in this case reviewed by the Supreme Court of United States.

It is extremely desirable that it be finally adjudged, and without delay, whether the estate received by an allottee of the Five Civilized Tribes is ancestral or a new acquisition, as the uncertainty of the law upon this subject is a source of great embarrassment in the development of the country. The author has never believed the rule prescribed in the case of Shulthis v. McDougal is sound or in harmony with either the language of the Arkansas statute or its interpretation prior to its extension over the Indian Territory. Neither does he believe that the rule there declared is capable of affording a solution of the difficulties arising out of the descent of allotted Indian lands.

The ancestral estate under the Arkansas statute is the estate of inheritance under the common law enlarged so as to include a gift, grant, or devise made by either of the parents. In such a case the estate descends to the children and their descendants, and in the absence of children or their descendants it ascends to those of the blood through whom the estate came, to the exclusion of those of the blood of the other parent. In estates of inheritance, in the absence of descendants, the property goes exclusively to the heirs of the deceased who are of the blood of the ancestor from whom the estate came, and in no event does such an estate ascend to any one who is not of the blood of the ancestor.

The new acquisition is substantially the estate by purchase of the common law, limited by having carved out of

the same estates by gift, grant, or devise from the parents or either of them. In such a case the estate descends to the children and their descendants, and in the absence of children or their descendants ascends to the father for his lifetime, then to the mother for her lifetime, and then to the collateral kindred in fee; the father's family being given preference only over the mother's family. Under the interpretation given to the Arkansas statute by the Circuit Court of Appeals for the Eighth Circuit and the Supreme Court of the state the courts and lawyers of the state are presented with the problem of following an ancestral estate through two separate and distinct lines of heirship, something unheard of in ancestral estates, and which probably will be difficult in practical application.

It will be observed that the Circuit Court of Appeals held that, inasmuch as one of the parents was not of Indian blood, the full title passed to that parent who was of Indian blood.

In the case decided by the Supreme Court of the state both parents were of Indian blood and survived the allottee, and it was held that the estate passed in equal moieties to the father and mother. Suppose that the father or mother only had survived, would the entire estate have gone to the survivor, or would it have gone half to the survivor and half to the heirs of the deceased parent? Upon the death of either of the parents without descendants, where both parents survive the allottee, by what rule is the right of descent to be determined?

These are only a few of the perplexing questions that will arise from the establishment of a rule creating two separate and independent ancestors to and from whom the descent of an ancestral estate must be followed.

§ 245. **Dower.**—Under chapter 53 of Mansfield's Digest a widow is endowed of the third part of all the lands whereof her husband was seised of an estate of inheritance at any time during marriage unless the same shall have been

relinquished in legal form.⁴ The most serious question in connection with the application of the statute on dower interest in Indian lands is when the husband becomes seised of an estate of inheritance under the statute to which the widow's dower may attach.

It is believed that upon the selection and acceptance of an allotment the estate secured is one to which the right of dower attaches, that prior to such selection the title is in the tribe and there is no devisable interest, and therefore neither seizin nor estate of inheritance to which dower may attach.⁵

One of the more serious questions is the right of the wife to dower in land allotted in the name of a deceased member of the tribe. In this class of cases it has been most seriously contended than elsewhere that the right of dower attached prior to the selection of the land in allotment. But there seems to be no foundation for the application of a different rule in cases of this character. The right of a white woman who is intermarried with a member of the Indian tribe to take dower in his estate upon his death, other conditions justifying the same, has been the subject of much controversy but finally established.⁶

On the admission of the state of Oklahoma into the Union and the extension of the territorial statutes of descent and distribution over the state dower was abolished. Where the husband died before statehood and the wife's dower had thereby become vested such right was not affected by the extension of the law of the territory of Oklahoma over the state.

⁴ *Tate v. Jay*, 31 Ark. 576; *Hatcher v. Buford*, 60 Ark. 169, 29 S. W. 641, 27 L. R. A. 507; *Smith v. Howell*, 53 Ark. 279, 13 S. W. 929.

⁵ *Hawkins v. Stevens*, 21 Okl. 849, 97 Pac. 567; *Melton v. Lane*, 29 Okl. 383, 118 Pac. 141, Ann. Cas. 1913A, 628; *Curry v. McDaniel*, 33 Okl. 19, 124 Pac. 819; *Burdett v. Burdett*, 26 Okl. 416, 109 Pac. 922, 35 L. R. A. (N. S.) 964; *Armstrong v. Wood* (C. C.) 195 Fed. 137; *Wheeler v. Petite* (C. C.) 153 Fed. 471; *McCauley v. Tyndall*, 68 Neb. 685, 94 N. W. 813; *Reese v. Harlan*, 77 Neb. 485, 109 N. W. 762.

⁶ *Hawkins v. Stevens*, 21 Okl. 849, 97 Pac. 567.

What was the effect of the repeal of the statute upon the inchoate rights of the wife, where the marriage had taken place under the Arkansas law in force in the Indian Territory and the husband had acquired and held real estate at the time of the admission of the Indian Territory to statehood?

In the earlier Arkansas cases dower is mentioned as a vested right. The later cases, however, deprive dower of all the attributes of a vested right.⁷

Dower is a form of inheritance prescribed by law. No constitutional reason can be urged why the law affecting dower may not be changed before death, as can the law regulating the descent of property from one line of heirs to another during the life of the ancestor. Under the Arkansas statute much formality was required in the relinquishment of dower. This affected, not only the form of the conveyance, the form and manner of taking acknowledgments, but limited the grantee to the one who held the legal title.

§ 246. **Curtesy—Prerequisite of.**—Under the common law of Arkansas, as extended and made applicable to the estates of all persons within the Indian Territory, the right of the husband to curtesy in the estate of the wife is recognized where all common-law conditions exist.⁸ These conditions, as declared by the Supreme Court of Arkansas, are: First, marriage; second, issue born alive; and, third, actual seisin of an estate of inheritance by the wife during

⁷ *Smith v. Howell*, 53 Ark. 279, 13 S. W. 929; *Littell v. Jones*, 56 Ark. 139, 19 S. W. 497.

⁸ *McDaniel v. Grace*, 15 Ark. 465; *Harrod v. Myers*, 21 Ark. 592, 76 Am. Dec. 409; *Bagley v. Fletcher*, 44 Ark. 153; *Morris v. Edmonds*, 43 Ark. 427; *Milwee v. Milwee*, 44 Ark. 112; *Neely v. Lancaster*, 47 Ark. 175, 1 S. W. 66, 58 Am. Rep. 752; *Stanley v. Bonham*, 52 Ark. 354, 12 S. W. 706; *Boghy v. Roberts*, 48 Ark. 18, 2 S. W. 186, 3 Am. St. Rep. 211; *Shulthis v. McDougal*, 170 Fed. 529, 95 C. C. A. 615; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338; *Parr v. United States* (C. C.) 153 Fed. 462; *McCauley v. Tyndall*, 68 Neb. 685, 94 N. W. 813; *Beam v. United States*, 162 Fed. 260, 89 C. C. A. 240.

coverture—the only exception being where the estate is wild, uncultivated and not in adverse possession. Curtesy as a common-law right had its origin long prior to the fourth year of the reign of King James I. As to whether the Arkansas law of descent came with the extension of the Arkansas statutes of 1890, with the Act of April, 1897, or with the Act of April 28, 1904, is fully discussed under the title of Descent.

It has not been finally adjudged whether, where the law of descent as prescribed in chapter 49 of Mansfield's Digest of the Statutes of Arkansas was in force in the Indian Territory prior to statehood, the husband took an estate by curtesy in the allotted lands of his deceased wife. Undoubtedly the right of curtesy did not attach in such cases until the lands were segregated from the tribal domain.⁹

That the rights of curtesy would attach where there was a segregation of the land in allotment, marriage, seisin and issue born alive has been held by the District Court of the United States for the Eastern District of Oklahoma as applicable to a Creek allotment.¹⁰

The husband's right of curtesy in the estate of a deceased allottee where title was held in trust has also been sustained under the laws of the state of Oregon.¹¹ In Oregon, however, the curtesy rights of the husband are fixed by statute and are not wholly dependent on the common law. The statute of Oregon is, however, but declaratory of the common-law right of curtesy.

The question of the husband's right to curtesy in the allotted lands of his wife is directly involved in a case now pending in the Supreme Court of the state.¹²

⁹ *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 838.

¹⁰ *Armstrong v. Wood* (C. C.) 195 Fed. 137.

¹¹ *Parr v. United States* (C. C.) 153 Fed. 463; *Beam v. United States* (C. C.) 153 Fed. 474; *Beam v. United States*, 162 Fed. 260, 89 C. C. A. 240.

¹² *Johnson v. Simpson*, not yet decided.

§ 247. **Curtesy not a vested right.**—Curtesy was abolished at the incoming of statehood. What effect did this repeal have upon curtesy initiate? Did it fall with the repeal, or was the right such a vested one as to survive notwithstanding the repeal?

A distinction seems to be drawn between the curtesy right of the husband, where he is entitled to the present enjoyment of his wife's real estate, and those cases where she is given the right of control and disposition of the same. In the first instance the right of curtesy, being coupled with the present right of enjoyment, has usually been held to be a vested right and incapable of being destroyed by subsequent legislation. In the last-mentioned case the courts have generally, though not uniformly, held the right not to be a vested one, and therefore subject to repeal.¹⁸

¹⁸ *Tiller v. McCoy*, 38 Ark. 91; *Shyrock v. Cannon*, 39 Ark. 434; *Erwin v. Puryear*, 50 Ark. 356, 7 S. W. 449.

CHAPTER 28

DESCENT OF ALLOTTED LANDS OF ALLOTTEES OF OTHER THAN FIVE CIVILIZED TRIBES

- § 248. Descent of allotted lands under General Allotment Act.
- 249. Descent as affected by Amendments to General Allotment Act.
- 250. Absentee Shawnee and Citizen Pottawatomie—Descent.
- 251. Cheyennes and Arapahoes—Descent.
- 252. Iowa—Descent.
- 253. Kansas or Kaw—Descent.
- 254. Kiowa, Comanche and Apache—Descent.
- 255. Kickapoo—Descent.
- 256. Modoc, Ottawa, Seneca, Shawnee and Wyandotte—Descent.
- 257. Osage—Descent.
- 258. Otoe—Descent.
- 259. Ottawa—Descent.
- 260. Pawnee—Descent.
- 261. Peoria, Kaskaskia, Plankeshaw, Wea and Western Miami—Descent.
- 262. Ponca—Descent.
- 263. Quapaw—Descent.
- 264. Sac and Fox—Descent.
- 265. Tonkawa—Descent.
- 266. Wichita and affiliated bands—Descent.

§ 248. Descent of allotted lands under General Allotment Act.—It is provided in the General Allotment Act “that the law of descent and partition in force in the state or territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered,” etc. The patent here referred to is no doubt the preliminary patent, and the allotted lands become subject to the laws of descent and partition of the state upon the issuance of such preliminary patent. While, as a general rule of law, during the existence of the tribal government the property of a member of the tribe descends according to the law or custom of such tribe, it seems to have been the intention of Congress to change this rule by substituting the law of descent of the state or territory in which the allotted lands are located for the tribal laws and customs.

In the absence of this particular provision, the authority conferred upon the territory of Oklahoma by section 6 of

the Organic Act is sufficiently broad to authorize the territorial Legislature to legislate with reference to the descent or succession of the lands situated within the territory and held by title capable of passing by descent or succession, and this without regard to whether the owner of such land happens to be of Indian descent or otherwise. There are many reasons why the rule declared by the statute should be adopted. Very few of the Indian tribes in Oklahoma had written laws. Prior to allotment there was no such property subject to descent as lands or real estate in the proper sense of the term, and it may be well doubted if many of the tribes had written laws affecting the descent or succession of real estate.

It is manifestly desirable to substitute the written laws of the state or territory in which the lands are situated, having an established and well-defined meaning, for the customs of the tribe, which rest in the memory of its members, and which must of necessity be more or less perverted to subserve the wishes of the members, parties litigant to controversies over lands or other property passing by descent or succession.

A majority of the agreements for allotment of lands of the tribes in Oklahoma contain provisions for cession to the United States of all lands not allotted, thereby working a destruction of the tribal government and the tribal organization; and if the laws of the state are not applicable, the allottees of such tribes are practically without any law of descent or succession. While it is not believed there is any reason to doubt that the laws of the state of Oklahoma relating to succession are applicable to the lands of allottees located therein, yet, if there were a doubt as to which should apply (the statutes of the state or the uncertain customs), the doubt should be resolved in favor of the statutes.¹

¹ *Beam v. United States*, 162 Fed. 260, 89 C. C. A. 240; *Beam v. United States* (C. C.) 153 Fed. 474; *Bonifer v. Smith*, 166 Fed. 846, 92 C. C. A. 604; *United States v. Bellm* (C. C.) 182 Fed. 161; *United*

§ 249. **Descent as affected by amendments to General Allotment Act.**—Section 5 of the Amendment of February 28, 1891, to the General Allotment Act provides that, for the purpose of determining the descent of land to the heirs of any deceased Indian under the fifth section of the original act, whenever any male and female Indian have cohabited together as husband and wife according to the customs and manners of Indian life, the issue of such cohabitation shall be, for the purpose of determining who shall inherit, deemed to be the legitimate issue of the Indians so living together, and that every Indian child who would otherwise be illegitimate shall for such purpose be taken and deemed to be the legitimate issue of the father of such child.

This act is not in entire harmony with the Oklahoma territorial statute on the subject. That statute undertook to recognize the validity of relations of the character above dealt with only in those cases where the parties were living together at the time of the passage of the act and had been previously married according to Indian customs. To the extent to which the Oklahoma statute conflicts with the federal statute it must yield, and where not conflicting it would control.

There is subsequent legislation changing the jurisdiction and authority to determine who takes by inheritance allotted Indian lands, and extensions of the General Allotment Act and amendment thereto applying the provisions thereof to other tribes than those to which it was originally applicable. None of these acts, however, change or modify the

States v. Park Land Co. (C. C.) 188 Fed. 383; *United States v. Choc-taw, O. & G. R. Co.*, 3 Okl. 404, 41 Pac. 729; *Guyatt v. Kautz*, 41 Wash. 115, 83 Pac. 9; *Porter v. Parker*, 68 Neb. 338, 94 N. W. 123; *Smith v. Smith*, 140 Wis. 599, 123 N. W. 146; *Little Bill v. Swanson*, 64 Wash. 650, 117 Pac. 481; *Non-she-po v. Wa-win-ta*, 37 Or. 213, 62 Pac. 15, 82 Am. St. Rep. 749; *Conway v. United States* (C. C.) 149 Fed. 261.

line of descent where the General Allotment Act is applicable.²

§ 250. **Absentee Shawnee and Citizen Pottawatomie—Descent.**—By the allotment agreements with these two tribes, the provisions of the General Allotment Act are made applicable in such language as to make the same controlling in all matters covered by its terms, and by reason thereof the descent of allotted Absentee Shawnee and Citizen Pottawatomie land is controlled by the laws of the territory and state of Oklahoma.

§ 251. **Cheyennes and Arapahoes—Descent.**—The Cheyenne and Arapahoe Agreement makes no specific provision in relation to the descent of allotted lands, nor has the matter been dealt with by any special legislation applicable to the Cheyenne and Arapahoe Tribes only.

Under the Cheyenne and Arapahoe Allotment Agreement the title of the allottee is to be taken, held and conveyed at the expiration of the trust period in accordance with the provisions of the General Allotment Act. This would, of course, mean to the allottee or his heirs according to the law of descent of the territory or state of Oklahoma.

§ 252. **Iowa—Descent.**—The Iowa Allotment Agreement provides that the title of allottees shall be held in trust for the period of twenty-five years for the benefit of the Indian to whom such allotment is made, or, in case of his or her decease, of his or her heirs or devisees according to the law of the state or territory where such land is located. The Iowa Agreement recites that the Iowa reservation is located in the Indian Territory. The act of Congress confirming and revising this agreement recites that it was made with the Iowa Tribe of Indians residing on the Iowa Reservation in the territory of Oklahoma formerly a part of the Indian Territory. This would seem

² United States v. Bellm (C. C.) 182 Fed. 161.

to fix the law of descent of Iowa allotted lands as that of the territory and state of Oklahoma.

§ 253. **Kansas or Kaw—Descent.**—The Kansas or Kaw Agreement submitted to Congress for ratification contained no provision regulating the descent of allotted lands.

Section 9 of the act, however, provided that all funds remaining to the credit or found to be due from the United States to any member of the tribe at the date of his death should be paid to his or her heirs according to the laws of the territory or state in which such member resided at the time of his or her death.

Section 11 also authorizes conveyances by minor heirs of inherited lands upon approval of the duly appointed guardian by the proper court of the county in which such minor or minors reside, subject to the approval of the Secretary.

These two provisions seem to recognize the law of descent of the territory or state in which the allotted lands are located, and to wholly disregard the law of descent, if any, of the Kansas or Kaw Tribe.

Considering the above provisions in connection with the Act of June 19, 1902, it seems to make it reasonably clear that the law of descent of the territory and state of Oklahoma is applicable to and controls the allotted lands of the Kansas or Kaw allottees.

§ 254. **Kiowa, Comanche and Apache—Descent.**—The Kiowa, Comanche and Apache Allotment Agreement contains no provision directly regulating or controlling the descent of allotted lands. Under said agreement, however, title is to be taken, held and conveyed to the allottee or his heirs at the expiration of the trust period in accordance with the provisions of the General Allotment Act.

This provision, considered in the light of the Act of June 19, 1902, would seem to apply the law of descent of the territory and state of Oklahoma to the allotted lands of members of these tribes.

§ 255. **Kickapoo—Descent.**—The Kickapoo Allotment Agreement is silent upon the subject of descent of allotted lands. Title, however, is taken thereunder to be held in trust by the United States for twenty-five years under the General Allotment Act, to be conveyed at the expiration of the trust period to the allottee or his heirs free from all incumbrances. This provision, considered in connection with the Act of June 19, 1902, apparently applies the law of descent of the territory and state of Oklahoma to Kickapoo allotted lands.

§ 256. **Modoc, Ottawa, Seneca, Shawnee and Wyandotte—Descent.**—The Modoc, Ottawa, Seneca, Shawnee and Wyandotte Tribes received their allotments under the General Allotment Act, which applied the Kansas statute of descent; the reservations of the Modoc, Ottawa, Seneca, Shawnee and Wyandotte Tribes being in the Indian Territory.

It is not believed that the extension of the Arkansas laws, by Act of April 28, 1904, to persons and estates in the Indian Territory, whether Indian, freedmen, or otherwise, operated to repeal the Kansas law of descent as made applicable by the General Allotment Act. It was perhaps the purpose of this act to establish a law of descent in lieu of that of the Indian tribes, wherein no enactment had theretofore prescribed a rule of descent.

Upon the incoming of statehood the Oklahoma law of descent was made applicable and superceded the law of descent theretofore in force as to allotted lands of these tribes.

§ 257. **Osage—Descent.**—Section 6 of the Allotment Agreement with the Osage provides: "That the land, moneys and mineral interests herein provided for of any deceased member of the Osage Tribe shall descend to his or her legal heirs according to the laws of the territory of Oklahoma or of the state in which said reservation may be hereafter incorporated, except where the decedent leaves

no issue, nor husband, nor wife, in which case said lands, moneys and mineral interests must go to the mother and father equally."

The Osage Agreement became a law on the 28th day of June, 1906, after the passage of the Enabling Act, and before the admission of Oklahoma to statehood.

Apparently it is within the power of Congress to enact a statute of Indian descent to remain in force in a state indefinitely. Such intention, however, should be manifest before a federal statute is substituted for that of the state. In this case it was the intention of Congress to do so, because it specifically provides that the statute of the territory or the state to be thereafter created shall apply, with the exceptions mentioned.

On the 20th day of March, 1909, the Governor of the state of Oklahoma approved an act (Laws 1909, c. 35) amending the statute of descents (St. 1893, § 6261), so as to make exactly the same provision where the decedent leaves no issue, no husband, nor wife that is made in section 6 of the Osage Allotment Agreement. This act went into effect on the 12th day of June, 1909.

As long as the Oklahoma statute prescribing descent is the same in the particular mentioned as the special agreement, there can arise no question of which prevails. If the Legislature, however, should further amend the Oklahoma statute of descent, and thereby provide a different rule from that prescribed in the Osage Agreement, which law would prevail, that of Oklahoma or of the congressional act? This is a question of no great practical importance, and one which is a matter of speculation, except that actual cases may have arisen between the admission of Oklahoma to statehood and the going into effect of the amendment above referred to.

§ 258. **Otoe—Descent.**—The lands of the Otoe Tribe were allotted under the General Allotment Act, and the provisions thereof control in the matter of descent of the al-

lotted lands of members of said tribe. The reservation being in the territory of Oklahoma, the laws of the territory of Oklahoma and of the state of Oklahoma in force at various times are the laws of descent applicable to the allotted lands of the members of this tribe.

§ 259. **Ottawa—Descent.**—The members of the Ottawa Tribe received their lands in allotment under the General Allotment Act, and at the time were residents of what was the Indian Territory. The laws of the state of Kansas were, prior to statehood, applicable to and controlled the descent of allotted lands of the Ottawa Tribe.

At the incoming of statehood the law of descent of the state of Oklahoma was, by the Enabling Act and Constitution of the state, substituted for that of Kansas.

§ 260. **Pawnee — Descent.** — The Pawnee Allotment Agreement prescribed no rule of descent. It, however, required the title to allotted lands to be taken, held and conveyed under all the conditions and limitations of the General Allotment Act. The effect of this provision is no doubt to make the laws of descent of the territory and state of Oklahoma applicable to the descent of allotted Pawnee lands.

§ 261. **Peoria, Kaskaskia, Piankeshaw, Wea and Western Miami—Descent.**—The lands of the Confederated Peorias were allotted under the Act of Congress of March 2, 1889, which act referred to the Act of February 8, 1887, and made the same applicable to the allotted lands of said tribes. Under the terms of the General Allotment Act thus made applicable to the members of said tribes, the law of the state of Kansas controlled the descent of allotted lands of the allottees of said tribe,³ prior to statehood and the laws of the state of Oklahoma subsequent thereto.

³ *Buck v. Branson*, 34 Okl. 807, 127 Pac. 436; *Finley v. Abner*, 4 Ind. T. 386, 69 S. W. 911; *Id.*, 129 Fed. 734, 64 C. C. A. 262.

§ 262. **Ponca—Descent.**—The Poncas received their allotment under the General Allotment Act of 1887, and, being residents of the territory of Oklahoma, the law of descent controlling is that of the territory and subsequently of the state of Oklahoma.

§ 263. **Descent—Quapaw.**—Allotment of the Quapaw Reservation was made under an Act of the Quapaw Council approved by Act of Congress of March 2, 1895. This act prescribed no rule of descent for allotted Quapaw lands. The application of the law of the forum, to wit, the Arkansas statute of descent in force in the Indian Territory, subsequent to May 2, 1890, would seem to afford the most logical solution of the question. The specific extension of the Arkansas laws in force in the Indian Territory, including the statute of descent, "so as to embrace all persons and estates in said territory whether Indian, freedmen or otherwise," would seem to have fixed as a rule of descent that prescribed by the Arkansas statute subsequent to said date.

The author is informed by leading attorneys resident of Ottawa county, who have had long experience in the matter, that the Department of the Interior, prior to statehood, uniformly recognized the Arkansas statute on descent as controlling.

Local counsel have generally been of the opinion that in any event subsequent to April 28, 1904, and prior to November 16, 1907, the Arkansas statute prescribed the rule of descent.

There seems to be no reason why the extension of the laws of the territory of Oklahoma over the Indian Territory did not operate to repeal whatever law of descent was in force in the Quapaw Reservation and substitute in lieu thereof the law of descent of the state of Oklahoma.

An appeal is now pending in the Supreme Court of the state from a judgment of the district court of Ottawa county holding that between April 28, 1904, and November 16,

1907, the Arkansas statute controlled in the Quapaw Reservation in the matter of descent.

§ 264. **Descent—Sac and Fox.**—The law of descent and partition of the state or territory in which the lands are located is made applicable by the provision that the United States shall hold the lands so allotted for the sole use and benefit of the allottee and his heirs according to the laws of the state or territory in which the land is located. The Sac and Fox Reservation being within the limits of the territory of Oklahoma, the Oklahoma territorial statutes upon the subject of descent controlled until statehood, and those of the state since statehood.

§ 265. **Tonkawa—Descent.**—The Tonkawa Allotment Agreement provides that, in all cases where the allottee has died since said allotting agent set off and scheduled land to such person, the law of descent and partition in force in Oklahoma Territory shall apply thereto, any existing law to the contrary notwithstanding. The law of descent of the state of Oklahoma, as the successor of the territory of Oklahoma, under the terms of the Enabling Act, subsequent to statehood, controls the descent of allotted Tonkawa lands.

§ 266. **Wichita and affiliated bands—Descent.**—Under the allotment agreement made with the Wichita Tribe (Act March 2, 1895, c. 188, 28 Stat. 897), titles of allottees are to be held in trust for the period of twenty-five years in the manner and to the extent provided in the General Allotment Act, and at the expiration of twenty-five years the title is to be conveyed to the allottee or his heirs free and clear from all incumbrance.

The language used in this allotment agreement undoubtedly makes the laws of descent of the territory and state of Oklahoma applicable to allotted lands of the members of the Wichita and affiliated bands.

CHAPTER 29

DESCENT—HEIRSHIP—HOW DETERMINED

- § 267. Descent—Right of heirship as affected by sections 6458 to 6464, inclusive, Revised Laws of 1910.
- 268. Descent—Affidavits as to heirship.
- 269. Descent—Enrollment records of the Commission to the Five Civilized Tribes as evidence of.
- 270. Heirship as affected by section 6488, Revised Laws of 1910—History of statute providing procedure for establishing.
- 271. Descent—Jurisdiction to determine heirship.
- 272. Extent of jurisdiction.
- 273. Appearances and defaults.
- 274. Pleading.
- 275. Trial.
- 276. Appeal.
- 277. Constitutionality of the statute.
- 278. Not applicable to lands held under trust patents.

§ 267. Descent—Right of heirship as affected by sections 6458 to 6464, inclusive, Revised Laws of 1910.—Prior to June 17, 1909, sections 6458 to 6464, inclusive, of the Revised Laws of 1910, as found in the Statutes of 1890 and subsequent statutes, provide for the distribution of an estate being administered by the probate court of the territory of Oklahoma and county court of the state of Oklahoma.

Section 6464 of the Revised Laws of 1910 provides that the decree of distribution shall be conclusive as to the rights of heirship, legatees and division, subject only to be reversed, set aside, or modified on appeal.

It is a matter of grave doubt whether this statute prescribes such a procedure as would render a decree of distribution effective as against any one not a party to and not participating in the proceedings.

§ 268. Descent—Affidavits as to heirship.—In the absence of a decree in an administration proceeding fixing those who are entitled to take by inheritance the real estate of a decedent, the lawyer frequently has to determine heir-

ship, as a matter of fact, upon the evidence submitted. Affidavits of heirship are perhaps the form of evidence in most common use. Such affidavits, in general terms, are of little value. Indians do not usually fully appreciate the distinction in relationship which controls the descent of property. An affidavit submitted in evidence of heirship is valuable in so far as it determines the family history, tracing out the relation of each survivor to the deceased. In the absence of better evidence, such affidavits are frequently received and used.

§ 269. Descent—Enrollment records of the Commission to the Five Civilized Tribes as evidence of.—The Commission to the Five Civilized Tribes, in making a census or roll of the members of such tribes, prepared and entered of record a statement of the family history, showing the names of the children, the names of the father and mother, grandfather and grandmother, etc. It has been suggested that the rolls prepared by the Commission are conclusive evidence of the relationship of the various members of the tribe to each other as shown thereon.

No doubt the relationship as shown by these rolls is reasonably accurate, and is of much assistance in determining heirship in controverted cases. There has never been any act of Congress prescribing what legal effect, if any, should be given to these rolls in determining the relationship of members of the tribes.

There is no reason why this enrollment record made in an administrative proceeding, in the absence of a statute giving it that effect, should be conclusive evidence as between parties litigant who happen to be interested in the matter of descent therein recorded.

These records, however, were prepared under the supervision of an officer charged with the duty of making a correct record, with every motive to thoroughly investigate, correctly ascertain and properly enter of record the relationship of the parties. They were compiled from informa-

tion given by the members of the families affected, and at a time when there could have been no purpose to subserve by concealing or incorrectly stating any fact in connection therewith. These enrollment records, in most cases, more correctly speak the truth than will interested witnesses. The cause of justice will be subserved by their admission in evidence in controverted questions of heirship.

§ 270. Heirship as affected by section 6488, Revised Laws of 1910—History of statute providing procedure for establishing.—The Act of Legislature of June 17, 1909, with slight verbal changes, appears in the Revised Laws of 1910 as section 6488. It is identical, except some slight difference in details, which are unimportant, with section 1664 of the California Code. The language is so nearly identical as to make it manifest that section 6488 of the Revised Laws of 1910 of Oklahoma was copied from section 1664 of the Code of Civil Procedure of California.

Having adopted this statute from the California Code, we received it with the interpretation theretofore given by the court of last resort of the state of California. It has been construed and applied in numerous cases by the Supreme Court of that state,¹ having been in force there since 1885.

¹ *Rice v. Ruble*, 134 Pac. 49; *Hegler v. Faulkner et al.*, 153 U. S. 109, 14 Sup. Ct. 779, 38 L. Ed. 653; *Roach v. Coffey*, 73 Cal. 281, 14 Pac. 840; *Hitchcock v. Superior Court*, 73 Cal. 295, 14 Pac. 872; *Estate of Oxarart*, 78 Cal. 109, 20 Pac. 367; *In re Jessup*, 81 Cal. 408, 21 Pac. 976, 22 Pac. 742, 1028, 6 L. R. A. 594; *In re Grider*, 81 Cal. 571, 22 Pac. 908; *Smith v. Westerfield*, 88 Cal. 374, 26 Pac. 206; *In re Burton*, 93 Cal. 459, 29 Pac. 36; *Blythe v. Ayres*, 96 Cal. 532, 31 Pac. 915, 19 L. R. A. 40; *Blythe v. Ayres*, 102 Cal. 254, 36 Pac. 522; *Estate of Blythe*, 108 Cal. 125, 41 Pac. 33; *In re Blythe's Estate*, 110 Cal. 226, 42 Pac. 641; *Estate of Blythe*, 112 Cal. 689, 45 Pac. 6; *In re Joseph's Estate*, 118 Cal. 660, 50 Pac. 768; *McDonald v. McCoy*, 121 Cal. 55, 53 Pac. 421; *In re Healy's Estate*, 122 Cal. 162, 54 Pac. 736; *In re Kasson's Estate*, 127 Cal. 496, 59 Pac. 950; *In re Sheld's Estate*, 129 Cal. 172, 61 Pac. 920; *More v. More*, 133 Cal. 489, 65 Pac. 1044, 66 Pac. 76; *In re Christensen's Estate*, 135 Cal. 674, 68 Pac. 112; *In re Mills' Estate*, 137 Cal. 298, 70 Pac. 91, 92 Am. St. Rep. 175; *In re Wickersham's Estate*, 138 Cal. 355, 70 Pac. 1076, 71 Pac. 437; *In re Kasson's Estate*, 141 Cal.

The California Code divides the section into eight paragraphs, with a separate paragraph title for each. The entire section is entitled, in the California Code, "Distribution on Final Settlement."

§ 271. Descent—Jurisdiction to determine heirship.—County courts of the state in which administration proceedings are pending have jurisdiction, when the same is properly invoked, to determine who are the heirs of the deceased and entitled to distribution in whole or in part of such estate. The necessary steps to invoke jurisdiction are as follows:²

- (a) The filing of a petition.
- (b) The securing of an order directing service of notice.
- (c) The service of notice.
- (d) Proof of service of notice, and decree establishing same.

(a) A petition must be filed praying the court to ascertain and declare the rights of all parties to said estate and all interests therein and to whom distribution thereof should be made. It must not be filed before the expiration of one year from the granting of letters of administration, and not after the closing of the administration.

(b) An order must be made by the court directing service of notice on all persons interested in said estate to appear and show cause on a date to be fixed not less than sixty days nor over four months from the date of the making of the order. Such notice must set forth the name of the deceased, the name of the executor or administrator of the estate, the names of all persons who have appeared claiming any interest in the estate up to the time of the making of the order, and the names of such other persons as the court may direct.³

33, 74 Pac. 436; *Lindy v. McChesney*, 141 Cal. 351, 74 Pac. 1034; *In re Sutro's Estate*, 143 Cal. 487, 77 Pac. 402.

² *Blythe v. Ayres*, 102 Cal. 254, 36 Pac. 522.

³ *Bruner v. Ft. Smith & W. R. Co.*, 33 Okl. 711, 127 Pac. 700.

The notice must contain a description of the real estate of which the deceased died seised or possessed so far as known, described with reasonable certainty, and must require the persons to whom the notice is addressed, and all other persons, named or not named, having or claiming any interest in the estate of the deceased, to appear at the time and place in the order specified and exhibit their respective claims of heirship, ownership, or interest in said estate to said court.

(c) Such notice is required to be served in the same manner as a summons in a civil action, either by personal service or by publication.

(d) Proof of service of the notice to obtain a decree establishing service personally or by publication may be made by affidavit or otherwise as the court may prescribe. It is the duty of the court to examine the proof of service, and if satisfied that service has been properly made in accordance with law and the order of the court to enter an order or decree establishing proof of the service of such notice; and upon the entry of the decree establishing service the court acquires jurisdiction to ascertain and determine the heirship, ownership and interest of all parties in and to the property of the deceased, and such determination is final and conclusive as to the title and ownership of such property.

Jurisdiction thus established, the other provisions of the statute are directory, and are not to be considered as conditions precedent, and a strict compliance therewith is not vital to the validity of the proceedings.⁴

If any matter affecting the right of any of the parties in the proceeding has been properly heard, considered and adjudged, prior to the filing of the petition to determine heirship, the filing of such petition does not reopen the controversy and permit a new trial of the same.⁵

⁴ *Smith v. Westerfield*, 88 Cal. 374, 26 Pac. 206; *In re Sutro's Estate*, 143 Cal. 487, 77 Pac. 402.

⁵ *Blythe v. Ayres*, 102 Cal. 254, 36 Pac. 522.

§ 272. **Extent of jurisdiction.**—The county court, when its jurisdiction is properly invoked in the administration proceedings, is charged with the duty of ascertaining, deciding and adjudging who are heirs of the deceased and the interest of each and every claimant asserting the right to take the estate or any part thereof by inheritance or by virtue of an assignment or transfer from another who was entitled to take by inheritance.⁶

The court is not vested with jurisdiction to hear adverse claims, but to determine and adjudge the rights of those persons claiming to take by descent or devise from the decedent.

The proceeding under the California statute has been held not to be a civil action, but a special proceeding in probate matters.⁷

§ 273. **Appearances and defaults.**—All persons appearing within the time limit designated in the notice must file their written appearance in person or through an authorized attorney; such attorney filing, at the same time, written evidence of his authority to appear, entry of which appearance must be made in the minutes of the court and in the register of the proceedings of the estate.⁸

All persons not so appearing on or before the expiration of the time limited for appearing in the order and notice will upon the expiration of the time required be adjudged in default.

No person in default is entitled to be heard as a matter of right.

⁶ In re Blythe's Estate, 112 Cal. 689, 45 Pac. 6; In re Burton, 93 Cal. 459, 29 Pac. 36; In re Joseph's Estate, 118 Cal. 660, 50 Pac. 768. Cooley v. Miller & Lux, 156 Cal. 510, 105 Pac. 981; Chever v. Ching Hong Poy, 82 Cal. 68, 22 Pac. 1081; Estate of Vaughn, 92 Cal. 192, 28 Pac. 221; Estate of Burdick, 112 Cal. 392, 44 Pac. 735.

⁷ Smith v. Westerfield, 88 Cal. 374, 26 Pac. 206; In re Burton, 93 Cal. 459, 29 Pac. 36; In re Blythe's Estate, 110 Cal. 226, 42 Pac. 641; In re Joseph's Estate, 118 Cal. 660, 50 Pac. 768.

⁸ Hitchcock v. Superior Court, 73 Cal. 295, 14 Pac. 872; In re Kasson's Estate, 141 Cal. 33, 74 Pac. 436.

§ 274. **Pleading.**—At any time within twenty days after the date of the order or decree of the court establishing proof of service of notice, any person interested may file his complaint in the matter of the estate, setting forth the facts constituting his claim of heirship, ownership or interest in the estate with such reasonable certainty as the court may require,⁹ and serve a copy of the same upon each of the parties or attorneys who shall have entered their written appearance as provided in the statute, if such parties or attorneys reside within the county. If they do not reside within the county, then service may be made upon the clerk of the court for them, and the clerk shall forthwith mail the copy to the post office address of such party or attorney. Each of the parties served with a copy of the complaint shall be allowed twenty days after the service of a copy of such complaint to plead thereto, and thereafter such proceedings shall be had upon such complaint as are provided by law in cases of an ordinary civil action.

The first party to file a complaint is usually treated as plaintiff and the other parties as defendants, although in fact each party is a plaintiff so far as his own complaint is concerned and a defendant so far as those claiming adversely are concerned. In so far as the statement of facts contained in the various pleadings agree, issues of law are presented to the court for adjudication. In so far as they disagree, issues of fact are presented to the court for trial and judgment.

The administrator, though he may be a formal party to the action, is presumed to be disinterested, and is not permitted to participate in the controversies between the parties asserting the right to take the estate by inheritance or devise.¹⁰

⁹ *Blythe v. Ayres*, 102 Cal. 254, 36 Pac. 522; *In re Kasson's Estate*, 127 Cal. 496, 59 Pac. 950.

¹⁰ *Roach v. Coffey*, 73 Cal. 28, 14 Pac. 840.

§ 275. Trial.—The statute requires that the issues of law and fact arising in the proceeding shall be disposed of in same manner as issues of law and fact are tried or disposed of in civil actions, with a like right to motion for new trial and appeal.¹¹

For the purposes of the trial, and also proceedings subsequent thereto, the party first filing a complaint is treated as the plaintiff and all other parties appearing are treated as defendants. Evidence in support of the issues may be taken orally or by deposition in the same manner as provided in civil actions. Where the claimants or any of them are residents of a foreign country, the court may, in its discretion, receive affidavits to establish the facts in issue. On application of any of the parties in interest the court may, in advance, make an order stating whether affidavits will be received for such purposes. Depositions may be taken to establish any of the issues, and the method of taking shall be that provided in civil actions, except that notice of taking depositions must be served upon the parties or the attorneys of the parties appearing in the proceeding.

The court must enter a default against all persons failing to appear, plead, prosecute, or defend their rights, and upon the trial of the issues the court must determine the heirship of the deceased, the ownership of the interest of each respective claimant and the persons entitled to distribution of the estate.

The judgment of the court in determining such heirship is final and conclusive in the distribution of the estate in regard to all of the property belonging thereto.

The fullest right of cross-examination is allowed by those adversely interested.

The issues of fact raised by the complaint and answer in a proceeding for the determining of heirship may be submitted to a jury.

¹¹ In re Kasson's Estate, 127 Cal. 496, 59 Pac. 950; In re Sheld's Estate, 122 Cal. 528, 55 Pac. 328.

The decree should find,¹² adjudge and decree in detail the relationship of each of the contestants to the deceased and the interest of each in and to the estate to be distributed. The decree should not only include those entitled to participate, but exclude those not entitled to participate, and such decree is as final and conclusive as to those held not to be entitled to the right to participate as to those held to be entitled to participate.

The statute specifically provides that nothing therein contained shall be construed to exclude the right upon final distribution of an estate to contest the question of heirship, title, or interest therein, where the same has not been determined in accordance therewith; but where such question shall have been litigated in the proceeding to determine heirship the determination thereof is conclusive in the distribution of the estate.

To prevent the possible repeal of any other statute, this is declared to be cumulative to the provision of any existing law to determine heirship to any deceased person, and not as a repeal of any existing law covering the administration of estates, except such as may be in direct conflict therewith.

§ 276. **Appeal.**—An appeal may be taken from a decree establishing heirship in the manner and to the court provided by law in cases of appeal in probate matters generally; the time and manner of taking such appeal and perfecting the same, the undertaking thereon and all other matters of procedure covering the same to be that provided by law for governing appeals in probate matters.¹³

¹² In re Blythe's Estate, 110 Cal. 229, 42 Pac. 642; Estate of Blythe, 108 Cal. 124, 41 Pac. 33; Estate of Blythe, 112 Cal. 689, 45 Pac. 6; McDonald v. McCoy, 121 Cal. 55, 53 Pac. 421.

¹³ In re Grider, 81 Cal. 571, 22 Pac. 908; Smith v. Westerfield, 88 Cal. 374, 26 Pac. 206; Estate of Westerfield, 96 Cal. 113, 30 Pac. 1104; Blythe v. Ayres, 102 Cal. 254, 36 Pac. 522; Weidenhoft v. Primm, 16 Wyo. 340, 94 Pac. 453.

§ 277. **Constitutionality of the statute.**—So far as the author has been able to discover, the constitutionality of the statute has not been directly drawn in question. Decrees entered in proceedings to determine heirship have been sustained by the Supreme Court of California as final in more than a score of cases. The provisions for notice are identical with those required in civil actions presumed-ly including those relating to proceedings in rem. The proceeding to determine heirship to property in the control of the court is practically a proceeding in rem, and actually so as to all parties who cannot be personally served. The statute seems to have prescribed with fairness the constitutional guaranties of notice and opportunity to be heard. Twenty-five years' actual application in a state having more controversies over heirship than perhaps any other state in the Union, without its constitutionality being challenged in the court of last resort, is at least reasonable evidence that the statute is not violative of fundamental guaranties.¹⁴

§ 278. **Not applicable to lands held under trust patents.**—The provisions of this statute are not applicable to allotted Indian lands, where the title is held by the United States in trust for the use and benefit of the allottee; that is to say, where the lands have been allotted and a preliminary or trust patent only issued. Prior to June 25, 1910, if the jurisdiction of the Secretary of the Interior was not exclusive in the matter of determining the heirs of allotted lands held in trust by the United States, only the federal courts had jurisdiction to determine the same.

For a number of years the state courts assumed jurisdiction to determine heirship in such cases, but it was finally decided by the Supreme Court of the United States that they possessed no such jurisdiction.

¹⁴ *Christianson v. King County* (D. C.) 196 Fed. 791; *Id.* (C. C. A.) 203 Fed. 894; *Goodrich v. Ferris*, 214 U. S. 71, 29 Sup. Ct. 580, 53 L. Ed. 914; *William Hill Co. v. Lawler*, 116 Cal. 359, 48 Pac. 323.

By the Act of June 25, 1910, except as to allotted lands in Oklahoma, all jurisdiction of all courts to determine heirship where allotted lands were held in trust was divested, and full, complete and exclusive jurisdiction vested in the Secretary of the Interior to determine such heirship.

By the Act of February 14, 1913, amending section 2 of the Act of June 25, 1910, the jurisdiction of the Secretary of the Interior to determine heirship is extended to lands inherited from allottees of all Indian tribes while the lands are held in trust or subject to restriction on alienation, except the Five Civilized Tribes and the Osages.¹⁵

¹⁵ See sections 948a and 948c.

CHAPTER 30

EASEMENTS IN INDIAN LANDS

- § 279. Easements in general.
- 280. Easements for railway purposes—Act of March 2, 1899.
- 281. Easements for railway purposes—Act of February 28, 1902, and later acts.
- 282. Right of way for pipe lines through Indian lands.
- 283. Right of way for telephone and telegraph companies.
- 284. Rights of way for light and power companies.
- 285. Public roads—In general.
- 286. Public roads—Cherokee Nation.
- 287. Public roads—Creek Nation.
- 288. Public roads—Choctaw, Chickasaw and Seminole Nations.
- 289. Public roads—Osage Nation.

§ 279. Easements in general.—Easements for railroad right of way, station grounds and other railway purposes have been granted by Congress through Indian reservations and tribal lands almost from the beginning of railway construction. In most instances, in the early days, these grants were by special acts. It is probable that many of these grants operated to pass a fee simple title rather than an easement. Grants of this character are discussed under the title of easements because they are usually so regarded. It is not the purpose to here draw a distinction between those grants which operate to pass a fee title and those which grant only an easement. Easements have also been granted by Congress over Indian lands for pipe line purposes, telegraph and telephone lines, light and power transmission lines and for public highways.

The application of these acts will be considered with reference to the grants of authority in the particular cases.

§ 280. Easements for railway purposes—Act of March 2, 1899.—By Act of March 2, 1899,¹ a right of way was granted to railway, telegraph, and telephone lines through any Indian reservation, through any lands held by any

¹ 30 Stat. 990, c. 374.

tribe or nation reserved for agency uses and purposes, and lands allotted in severalty to any individual Indian which had not been conveyed to the allottee with full power of alienation. This statute was applicable to Indian reservations, tribal lands, and individual allottees in any state or territory of the United States. This act was, so far as applicable to the then Indian and Oklahoma Territory, and to the now state of Oklahoma, repealed by the Act of February 28, 1902 (32 Stat. 43, c. 134); said repeal being by the substitution of the provisions of the Act of February 28, 1902, for those of the Act of March 2, 1899.

By section 16 of the Act of June 25, 1910,² the Act of March 2, 1899, was amended, as applicable to Indian reservations, tribal lands and Indian allotments located outside of Oklahoma, to require, as a condition precedent to each and every grant of right of way, that the railway company applying therefor stipulate that it will construct and permanently maintain suitable passenger and freight stations for the convenience of each and every town site established by the government along said right of way.

§ 281. Easements for railway purposes.—The Act of February 28, 1902,³ commonly known as the "Enid & Anadarko Act," by the first twelve sections granted a right of way to the Enid & Anadarko Railroad Company and prescribed a procedure for the acquisition of a right of way under said grant.

Sections 13 to 23, inclusive, of the Enid & Anadarko Act, constituted a general grant of right of way to railway companies to locate, construct, own, equip, operate, use and maintain railway, telegraph and telephone lines into or through the Indian Territory, the Osage Nation and Oklahoma Territory, with the right to take and condemn lands for right of way, depot grounds, terminals and other rail-

² See section 929.

³ 32 Stat. 43, c. 134, 3 Fed. Stat. Ann. 475. See, also, chapter 79 hereof.

way purposes. Said grant was operative as to all lands held by any Indian tribe or nation, person, individual, or municipality in said territories and to all lands which had been or should thereafter be allotted in severalty to any individual Indian or other person, whether the same had been or not conveyed to the allottee with full power of alienation. Although the lands located within the territory of Oklahoma and Osage Nation are not mentioned in section 13, by the proviso to section 23 of the act is extended to the Osage Reservation and to other Indian reservations and allotted lands in the territory of Oklahoma. It is not the purpose to consider the various steps necessary to acquire a right of way under the provisions of this act, but to note its existence and general scope.

By section 25 of the Act of April 26, 1906, the Enid & Anadarko Act was extended so as to make it applicable to light and power companies. Some amendments were also made in the matter of procedure, which are perhaps applicable to proceedings to condemn lands for railway purposes.

By section 1 of the Act of May 27, 1908, it is provided: "No restriction of alienation shall be construed to prevent the exercise of right of eminent domain in condemning rights of way for public purposes over allotted lands, and for such purposes sections thirteen to twenty-three, inclusive, of an act entitled 'An act to grant the right of way through Oklahoma Territory and the Indian Territory to the Enid & Anadarko Railway Company and for other purposes,' approved February 28, nineteen hundred and two (32 Statutes at Large, page 43) are hereby continued in force in the state of Oklahoma."

All of the other provisions relating to the granting of rights of way to railway companies other than that in the Act of May 27, 1908, became effective prior to statehood. There seems to have been a careful and consistent effort to keep alive and make effective in the territories and in

the state of Oklahoma the eminent domain provisions of the Enid & Anadarko Act.

§ 282. Right of way for pipe lines through Indian lands.—By the Act of Congress of March 11, 1904,⁴ the Secretary of the Interior was authorized and empowered to grant a right of way in the nature of an easement for the construction, operation and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, any lands held by any Indian tribe or nation, any lands reserved for an Indian agency or school or other purposes in connection with the Indian service, or through any lands allotted in severalty to an individual Indian, but which had not been conveyed to the allottee with full power of alienation; the grant to be upon the terms and conditions expressed in the act.

The construction of a pipe line across Indian lands is prohibited until authority therefor has been first obtained from the Secretary of the Interior. Lateral lines establishing connections with main lines are authorized to be constructed upon individual allotments of citizens, without securing authority from the Secretary of the Interior, upon the consent of the allottee upon whose land the oil or gas well may be located and of all other allottees through whose lands the lateral pipe may pass. Maps of definite location of the main pipe lines are required to be filed with and approved by the Secretary of the Interior as a condition precedent to the grant of the pipe line easement. The easement thus authorized to be granted must not extend beyond a period of twenty years; but the Secretary may, at the expiration of such period, extend the right to maintain such pipe line for another period, not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper.

The compensation to be paid to the tribes for tribal property and to the individual allottee is to be determined in such

⁴ 33 Stat. 65, c. 505; section 1163 hereof.

manner as the Secretary of the Interior may direct, and his action is made final.

The constitutionality of this act has been sustained by the Supreme Court of the state of Oklahoma.⁵

§ 283. Right of way for telephone and telegraph companies.—By the Act of Congress of March 3, 1901,⁶ the Secretary of the Interior is authorized and empowered to grant a right of way in the nature of an easement for the construction, maintenance and operation of telephone and telegraph lines and offices for telephone and telegraph business through any Indian reservation or tribal lands in the Indian Territory or lands reserved for agency, school or other purposes in connection with the Indian service, and through any lands allotted in severalty to an individual Indian which, at the time of the grant, had not been conveyed to the allottee with full power of alienation.

The act contains a prohibition against the construction of telephone or telegraph lines across Indian lands until authority therefor has first been obtained from the Secretary of the Interior.

The compensation to be paid to the tribes and individual allottees for such right of way is determined in such manner as the Secretary of the Interior directs, and his action is final.

§ 284. Rights of way for light and power companies.—Section 25 of the Act of April 26, 1906,⁷ invests any light or power company doing business within the limits of the Indian Territory, in compliance with the laws of the United States, with a right of locating, constructing, owning, operating, using and maintaining canals, reservoirs, auxiliary steam works, and a dam or dams across nonnavigable streams in the Indian Territory for the purpose of obtain-

⁵ Texas Co. v. Henry, 34 Okl. 342, 126 Pac. 224.

⁶ 31 Stat. 1083, c. 832, § 3; section 1164 hereof.

⁷ Reproduced in full as section 732.

ing a water supply to manufacture and generate water, electric or other power, light and heat and utilize, transmit and distribute the same. It further invests such companies with the right of locating, constructing, owning, operating, equipping, using and maintaining the necessary pole lines and conduits for the purpose of transmitting and distributing such power, light and heat within the limits of such territory.

The purchase of right of way easements, and agreements for the exercise of the same, when made with individual Indians where the right of alienation does not exist, is made subject to the approval of the Secretary of the Interior.

The power to exercise the right of eminent domain to acquire such land as may be necessary is directly conferred and authorized to be exercised under the provisions of the Enid & Anadarko Act as therein amended.

There may possibly be a question as to whether the furnishing of light and power is a public purpose in such a sense as to justify the exercise of the right of eminent domain as against the individual owner of lands sought to be condemned.

Because of the very broad and comprehensive power of Congress in dealing with Indians and Indian lands, it is probable that the grants of easement found in this act are within the limits of congressional authority.

§ 285. Public roads—In general.—By section 4 of the Act of March 3, 1901,^{*} the Secretary of the Interior is authorized to grant permission to the proper state or local authorities to open and establish public highways in accordance with the laws of the state in which the lands are situated, through any Indian reservation, or through any lands which have been allotted in severalty to any individual Indian, but which have not been conveyed to the allottee with full power of alienation. This act is intended to provide a means for the location and opening up of public

^{*} 31 Stat. 1084, c. 832, § 4, reproduced in full as section 1165.

highways upon Indian reservations, whether allotted or unallotted, provided the lands are not held free from restrictions upon alienation. In many cases the tribal allottee is a mere donee of the general government, and in such case Congress would have the right to authorize the Secretary to grant a right of way for highway purposes across his lands, and this would undoubtedly be true where the allotment was taken after March 3, 1901.

The act, however, does not seem to contemplate that the Secretary's permission is to operate as a grant, but merely as a permission to the local authorities to acquire such lands for highway purposes by making compensation or through the exercise of the right of eminent domain. This section is probably not applicable to the lands of allottees of the Five Civilized Tribes, and certainly not applicable where there is positive legislation upon the subject. Congress has usually legislated with special reference to the Five Civilized Tribes and excluded them from the application of the general Indian legislation.

§ 286. Public roads—Cherokee Nation.—By section 37 of the Cherokee Agreement public roads two rods in width, one rod on each side of the section line, may be established without compensation being paid therefor, and all allottees, purchasers and other persons take title to the land subject to such right. Public roads may be established elsewhere whenever necessary for the public good, the actual value of the land so taken to be determined under direction of the Secretary of the Interior during the existence of the tribal government and to be paid by the Cherokee Nation. The reservation of public roads along the section line under this agreement undoubtedly runs with the land and may be availed of at any time without the necessity of making compensation.

As to roads elsewhere than on section lines compensation would have to be made or the laying out of such roads would be a taking of property without due process of law.

§ 287. **Public roads—Creek Nation.**—Section 10 of the Supplemental Creek Agreement is in almost identical language with section 37 of the Cherokee Agreement, considered in the preceding section, with the exception that the reservation for a highway made in the Creek Supplemental Agreement is three rods wide, being one and one-half rods on each side of the section line, whereas under the Cherokee Agreement the reservation is two rods wide, being one rod on each side of the section line. What is said with reference to the reservations in the Cherokee Agreement is in all things applicable to the reservations in the Supplemental Creek Agreement.

§ 288. **Public roads—Choctaw, Chickasaw and Seminole Nations.**—No provision was made in either the Choctaw-Chickasaw Original or Supplemental Agreements, or in the Seminole Original or Supplemental Agreements for public highways. Congress undertook to remedy this condition by section 24 of the Act of April 26, 1906. It there provided that in the Choctaw, Chickasaw and Seminole Nations public highways two rods in width, being one rod on each side of the section line, may be established on all section lines, and that all allottees, purchasers and others take title to allotted lands subject to this provision.

Provision was made for the payment of damages to improvements resulting from the establishment of public highways, prior to the inauguration of state government, out of the funds of the tribes respectively; the amount to be paid to be ascertained under the supervision of the Secretary of the Interior. No provision was made for the payment of compensation for the lands taken. The statute specifically provided that no notice need be given to the owner of land of the opening up of the public highway, except in cases where the proposed highway is obstructed, and then only to remove the obstruction. Any landowner refusing to open up the highway or remove the obstruction to the use of the lands as a highway is declared to be guilty

of a misdemeanor, and liable in a civil action to any person for all damages sustained because of the failure to remove such obstruction.

Each member of these tribes accepted his allotment upon the basis that he secured an indefeasible title to the section line and was charged therefor in the division of the tribal property on the basis of appraised value of such land. After he selected his allotment and such selection was approved by the Secretary of the Interior the land ceased to be tribal domain and became individual property. If this statute should be construed as applicable to lands allotted prior to its enactment, it would constitute a taking of the lands of the allottee affected thereby without due process of law.

The rule perhaps would be different where the allotment is selected and the selection approved after the passage of the act. Such act should, therefore, be construed as being prospective, and applicable only to lands allotted subsequent to its approval.⁹

§ 289. Public roads—Osage Nation.—The Osage Allotment Agreement reserves for public highways or roads two rods in width, one on each side of all section lines in the Osage Indian Reservation, and provides that highways may be established thereon without any compensation therefor.

⁹ *Good v. Keel*, 29 Okl. 325, 116 Pac. 777; *St. Louis & S. F. R. Co. v. Love*, 29 Okl. 523, 118 Pac. 259.

CHAPTER 31

TAXATION OF INDIAN LANDS

- § 290. Taxation of Indian lands in general.
291. Taxation of lands allotted under the Cherokee Allotment Agreement.
292. Taxation of lands allotted under the Choctaw and Chickasaw Allotment Agreements.
293. Taxation of lands allotted under the Creek Agreement.
294. Taxation of lands allotted under the Seminole Allotment Agreement.
295. Taxation—Lands of allottees of Five Civilized Tribes as affected by Act of April 26, 1906.
296. Taxation of lands of allottees of Five Civilized Tribes as affected by Act of May 27, 1908.
297. Taxation of lands as to which restrictions are removed by the Secretary under the Act of May 27, 1908.
298. Taxation of lands allotted under the General Allotment Act.
299. Taxation of lands held under trust patents as affected by Act of May 27, 1902.
300. Taxation of allotted Indian lands as affected by the Act of May 8, 1906.
301. Taxation of lands allotted under the Absentee Shawnee and Citizen Pottawatomie Allotment Agreements.
302. Taxation of lands allotted under the Cheyenne and Arapahoe Allotment Agreement.
303. Taxation of lands allotted under the Iowa Allotment Agreement.
304. Taxation of lands allotted to Kansas or Kaw Indians.
305. Taxation of allotted lands of Kickapoo, Modoc, Otoe, Ottawa, Pawnee, Ponca, Seneca, Shawnee, Tonkawa and Wyandotte.
306. Taxation of lands allotted to the Kiowas, Comanches and Apaches.
307. Taxation of lands allotted under the Osage Allotment Agreement.
308. Taxation of lands allotted to Peoria, Kaskaskia, Piankeshaw, Wea and Western Miami.
309. Taxation—Quapaw, allotted lands.
310. Taxation of lands allotted under the Sac and Fox Allotment Agreements.
311. Taxation of lands allotted under the Tonkawa Allotment Agreement.
312. Taxation of lands allotted under the Wichita and Affiliated Bands Allotment Agreement.

§ 290. Taxation of Indian lands in general.—Without exception tribal lands are held not to be subject to state

taxation. Allotted lands, where title passes to the allottee, are, in the absence of treaty, agreement or legislative enactment, subject to state taxation. Taxation by state authorities may be prohibited by legislative provisions other than those dealing directly with the subject of taxation. For instance, prohibition against involuntary alienation in any form for a fixed period of time might well be treated and considered as a prohibition against taxation for such period. Taxation without the power to sell would amount to nothing. Prohibition against involuntary alienation would be useless, if the land might be sold for taxes.¹

In many allotment agreements and allotment acts there are independent provisions relating to the subject of voluntary alienation, involuntary alienation, or forced sale, and taxation. Wherever the exemption from taxation is separate and distinct from the provision prohibiting alienation, the lands protected thereby would become subject to taxation and to sale on default in payment of taxes at the expiration of the tax exemption notwithstanding other prohibitions against alienation found in the agreement or act.

The respective authorities having in these cases dealt with the subject of taxation by separate and independent legislation, it should be assumed that the specific tax provision affords the full measure of protection intended to be given.

In other words, the provision prohibiting voluntary or involuntary alienation should not be treated as cumulative to the provisions exempting from taxation.

As a general rule lands held in trust by the United States are not subject to state taxation, nor are the improvements

¹ *Kansas Indians*, 5 Wall. 737, 18 L. Ed. 667; *Yellow Beaver v. Miami County*, 5 Wall. 757, 18 L. Ed. 673; *Fellows v. Denniston*, 5 Wall. 761, 18 L. Ed. 708; *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532; *New Jersey v. Wilson*, 7 Cranch, 164, 3 L. Ed. 303; *Auditor General v. Williams*, 94 Mich. 180, 53 N. W. 1097; *Hilgers v. Quinney*, 51 Wis. 62, 8 N. W. 17; *Wau-pe-man-qua v. Aldrich* (C. C.) 28 Fed. 489.

on such lands subject thereto.² Allotment agreements stipulating for exemptions from taxation are liberally construed for the protection of the allotted lands against state taxation and are valid as against both state and congressional legislation seeking to subject such lands to taxation within the exemption period.³ The nature and extent of the exemptions of allotted Indian lands from state taxation must be ascertained from the allotment agreements and legislation under which the allotments were made.⁴

It is probable that a grant of a tax exemption without parting with a consideration therefor by the allottee would be subject to repeal by legislative action, but not a contract exemption secured upon proper consideration.

§ 291. Taxation of lands allotted under the Cherokee Allotment Agreement.—The tribal lands of the Cherokee Nation were allotted under the provision of the Cherokee Agreement and the only reference therein made to the subject of taxation is found in section 13 thereof.

Section 13 of said agreement requires that each member of the tribe shall designate out of his allotment a homestead equal in value to forty acres of the average lands of the Cherokee Nation, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment; that “during the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.”⁵

² *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532.

³ *Choate v. Trapp*, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941; *Gleason v. Wood*, 224 U. S. 679, 32 Sup. Ct. 571, 56 L. Ed. 947; *English v. Richardson*, 224 U. S. 680, 32 Sup. Ct. 571, 56 L. Ed. 949; *Whitmire v. Trapp*, 33 Okl. 429, 126 Pac. 578; *Wellep v. Audrian* (Okl.) 128 Pac. 254.

⁴ *Pennock v. Franklin County*, 103 U. S. 44, 26 L. Ed. 367; *Goudy v. Meath*, 203 U. S. 146, 27 Sup. Ct. 48, 51 L. Ed. 130; *Keokuk v. Ulam*, 4 Okl. 5, 38 Pac. 1080; *Territory v. Delinquent Tax List of Bernalillo County*, 12 N. M. 139, 76 Pac. 307.

⁵ *United States v. Board of Com'rs of Osage County, Okl.* (C. C.) 193 Fed. 485.

The Supreme Court of the United States has decided that the tax exemption stipulated for in certain of the allotment agreements with the Five Civilized Tribes, where patents are issued and accepted thereunder, are not revoked by the Act of May 27, 1908, and that said act, therefore, did not operate to make the Cherokee homestead subject to taxation while held by the allottee.⁶ It will be observed, however, that said homestead is to be nontaxable only so long as held by the allottee. Alienation by the allottee, where permitted under such legislation, or death of the allottee, would render the homestead subject to state taxation.⁷

§ 292. Taxation of lands allotted under the Choctaw and Chickasaw Allotment Agreements.—The original allotment agreement between the Choctaw and Chickasaw Nations and the United States provided that all lands allotted to members of the tribe should be nontaxable while the title remained in the original allottee, but not to exceed twenty-one years from date of patent. It may be noted that this agreement did not provide for the allotment of lands to Mississippi Choctaws, or in the name of deceased members of the tribe, and provided only for a tentative allotment to Choctaw and Chickasaw freedmen. No allotments were made under the Atoka Agreement, and the Supplemental Agreement contains no exemption of allotted lands from taxation. Notwithstanding this fact, the Supreme Court of the United States has treated, and undoubtedly in error, the lands in the Choctaw and Chickasaw Nation as having been allotted and patented under the Atoka Agreement. The exemptions from taxation, if any, contained in the Supplemental Agreement, are those resulting from prohibitions against alienation.

⁶ Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941; Gleason v. Wood, 224 U. S. 679, 32 Sup. Ct. 571, 56 L. Ed. 947; English v. Richardson, 224 U. S. 680, 32 Sup. Ct. 571, 56 L. Ed. 949.

⁷ Whitmire v. Trapp, 33 Okl. 429, 126 Pac. 578; Welles v. Audrian (Okl.) 128 Pac. 254.

Mississippi Choctaws, Choctaw and Chickasaw freedmen, and the heirs of deceased persons to whom allotments were required to be made under section 22 of the Choctaw-Chickasaw Supplemental Agreement were donees under the act and were not parties thereto and did not contract for the exemption of their lands from taxation. Lands allotted in the name of a deceased member under section 22 and passing to his heirs by descent were never subject to restrictions upon alienation and the title does not remain in the original allottee, but passes upon selection of the land in his name to his heirs.

If the tax exemptions contained in the Atoka Agreement are to be extended and applied to Mississippi Choctaws and Choctaw and Chickasaw freedmen, it must be done on some other theory than that they contracted to take the lands received by them in allotment free from taxation. It was within the power of the government to contract with the Choctaws and Chickasaws that such lands should be free from taxation for the limited time mentioned, but there is not apparent any expressed intention as to this class of donees in the supplemental agreement. The case decided by the Supreme Court of the United States involved only the validity of the Act of May 27, 1908, removing restrictions on alienation as to certain classes of land and subjecting such lands to taxation. The bill in that case made no mention of the Act of April 26, 1906. Throughout the opinion the right to the tax exemption contracted for in the agreement is supported by the assumption that patents were issued and accepted thereunder and before any change had been made in tax exemption rights found in the allotment agreements.

In other words, the Supreme Court of the United States seems to have treated the allotment agreement as an executory contract, and the issuance and acceptance of patents thereunder as in execution thereof and as conferring vested

property rights on the allottees.⁸ If the tax exemptions contained in the Atoka Agreement should be held to extend to Mississippi Choctaws and Choctaw and Chickasaw freedmen, death would operate to destroy the same because the title would no longer remain in the original allottee. The proper interpretation of the tax exemption in the Atoka Agreement extends the same only to allottees, not to their heirs, nor to lands allotted in the name of a deceased member of the tribe.

Because of the specific tax exemption contained in the Atoka Agreement, the restrictions on alienation imposed under the Supplemental Agreement should not be held to prevent taxation. If so held they are not contract exemptions, and the removal or expiration of restrictions on alienation would operate to subject such lands to taxation.

§ 293. Taxation of lands allotted under the Creek Agreement.—The original Creek Agreement provides that the Creek homestead shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years.⁹

The same section also contains the further provision, if the allottee has no heirs born subsequent to the ratification of such agreement, that he may dispose of his homestead by will free from limitations therein imposed, and if this is not done the lands shall descend to his heirs according to the laws of descent and distribution of the Creek Nation free from such limitations.

Section 16 of the Supplemental Creek Agreement provides that every citizen shall select from his allotment a homestead of forty acres which shall be and remain nontaxable, inalienable and free from incumbrance for twenty-one years from the date of the deed. Said section, however, further provides that if the allottee has no heirs born subsequent to May 25, 1901, he may dispose of his home-

⁸ Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941.

⁹ Lieber v. Rogers (Okla. Sup.) 133 Pac. 30.

stead by will, and if this be not done the same shall descend to his heirs free from the limitations contained in section 16 of the act.

The surplus lands of the Creek allottee are not exempt from taxation, unless mere restrictions upon alienation constitute such an exemption. It would appear that the homestead allotment of a member of the Creek Tribe remains nontaxable for the period of twenty-one years from the date of the allotment and that such tax exemption runs with the land.

Lands allotted in the name of deceased children living May 25, 1901, are not exempted from taxation, and likewise no tax exemption should attach to lands allotted to a deceased allottee under section 28 of the original Creek Agreement.

In so far as tax exemptions were stipulated for in the Creek Allotment Agreement they constitute an executed contract exemption, and such right cannot be destroyed without the consent of the person affected thereby.¹⁰ The right of the state to tax allotted and inherited Creek lands has been the subject of a rather full consideration in two opinions from the District Court of the United States for the Eastern District of Oklahoma.¹¹ These two cases have not gone to final judgment, and some of the conclusions therein contained as to the effect of the Act of May 27, 1908, have been overruled by the Circuit Court of Appeals for the Eighth Circuit.¹²

§ 294. Taxation of lands allotted under the Seminole Allotment Agreement.—The only provision in either the original or supplemental Seminole Agreement relating to the subject of taxation is as follows: "Each allottee shall designate one tract of forty acres, which shall, by the terms

¹⁰ Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941.

¹¹ United States v. Shock (C. C.) 187 Fed. 862; United States v. Shock (C. C.) 187 Fed. 870.

¹² Bartlett v. United States (C. C. A.) 203 Fed. 410.

of the deed, be made inalienable and nontaxable as a homestead in perpetuity."

Subsequently this homestead is made inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed, and during the time it is held by the allottee is not to be liable for any debt contracted by the owner thereof.

The original Seminole Agreement provides that all contracts for the sale, disposition or incumbrances of any part of an allotment made prior to date of patent shall be void. Restrictions are, therefore, imposed by one paragraph and tax exemptions granted by another. Considering the provision in the original agreement and the subsequent legislation, the homestead of the Seminole allottee is free from taxation during his lifetime or so long as the same is held by the allottee. Such land is made "nontaxable as a homestead." Does not this operate to limit the tax exemption during the period of homestead occupancy? Would not the death of the allottee or the sale of the land destroy the exemption?¹³ All other Seminole lands than the homestead are subject to taxation, unless an exemption from contract burdens operates as an exemption from taxation.

§ 295. **Taxation—Lands of allottees of Five Civilized Tribes as affected by Act of April 26, 1906.**—Section 19 of the Act of April 26, 1906, contained the following proviso: "That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation, as long as the title remains in the original allottee." The purpose of this section is to make restrictions on alienation and exemptions from taxation run concurrently, and to subject lands as to which the allottee is deemed

¹³ *Pennock v. Franklin County*, 103 U. S. 44, 26 L. Ed. 367; *Goudy v. Meath*, 203 U. S. 146, 27 Sup. Ct. 48, 51 L. Ed. 130; *McMahon v. Welsh*, 11 Kan. 280; *Miami County Com'rs v. Brackenridge*, 12 Kan. 114; *Quinney v. Town of Stockbridge*, 33 Wis. 505; *Keokuk v. Ulam*, 4 Okl. 5, 38 Pac. 1080; *Whitmire v. Trapp*, 33 Okl. 429, 126 Pac. 578; *Wellep v. Audrian* (Okl.) 128 Pac. 254.

competent to manage and dispose of to the burdens and benefits of state government. When this act became effective perhaps no more than one-half of the patents to allotted lands in the Five Civilized Tribes had been delivered. Did this affect the right to tax exemptions under allotment agreements where patents had not been issued and accepted, and the rights of the allottees had not become vested? In a recent case decided by the Supreme Court of the United States the bill alleged that taxes were extended against the lands involved under the Act of May 27, 1908. Demurrer was filed to the bill, and sustained, the proceedings dismissed, and the judgment of the trial court affirmed by the Supreme Court of the state, and carried to the Supreme Court of the United States on writ of error. That court, therefore, had no occasion to deal with the effect of the Act of April 26, 1906. In the petition for rehearing filed in this case, however, it was urged that as to those lands for which patents had not been delivered and accepted prior to April 26, 1906, the contract exemption from taxation did not exist. That the law had been changed prior to the vesting of the tax exemption right in the allottee. The motion was overruled without an opinion, and whether upon the assumption that the effect of the Act of April 26, 1906, was not in issue under the pleadings or that the grounds set forth in the motion were not well taken can only be surmised.¹⁴

§ 296. Taxation of lands of allottees of Five Civilized Tribes as affected by Act of May 27, 1908.—Section 4 of the Act of May 27, 1908, is as follows: "That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes: Provided, That allotted lands shall not be subjected or held liable to any form or personal

¹⁴ Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941.

claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law." The application, effect and constitutionality of this act has been directly drawn in question and decided by the Supreme Court of the United States, in so far as applicable to Choctaw and Chickasaw Indian allotted lands,¹⁵ and as to Creek allotments. It was held that the grants of tax exemption found in the allotment agreements constituted an offer to the allottees of the tribes of nontaxable land, which offer was accepted by the allottees and, with the consequent relinquishment of all claims to other lands, furnished a consideration for the grant of the tax exemption; that the tax exemption right became vested in the allottee upon the execution and delivery to and acceptance by him of a patent in accordance with the allotment agreement; that the issuance to and acceptance of the patent by the allottee converted the terms of the allotment agreement into an executed contract and conferred upon the allottee a vested right to the tax exemption therein provided for.

Can the stipulation for tax exemptions construed in these cases be extended to Chickasaw freedmen, to Mississippi Choctaws, and to minor members of the tribe enrolled under the Acts of March 3, 1905, and April 26, 1906? These additions to the membership rolls were sometimes made in the absence of an agreement with the tribes, or any one of them, and over the protest in at least one instance of many members of the tribe.

Can the land allotted to the members thus enrolled be held to have been exempted from taxation by the contract obligations found in the original allotment agreements, and the allotment of land, and the acceptance of the same by the allottees pursuant to such agreements?

¹⁵ Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941; Gleason v. Wood, 224 U. S. 679, 32 Sup. Ct. 571, 56 L. Ed. 947; English v. Richardson, 224 U. S. 680, 32 Sup. Ct. 571, 56 L. Ed. 949.

§ 297. **Taxation of lands as to which restrictions are removed by the Secretary under the Act of May 27, 1908.**—It is specifically provided in section 4 of the Act of May 27, 1908, that all lands from which restrictions have been or shall be removed shall be subject to taxation and other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes.

The Secretary of the Interior is authorized by section 1 of the Act of May 27, 1908, to remove restrictions on alienation of allotted land of allottees of the Five Civilized Tribes, in whole or in part, under such rules and regulations concerning terms of sale and disposal of proceeds for the benefit of respective Indians as he may prescribe. The allottees of the several tribes hold certain lands which are exempt from taxation by allotment agreements, under which patent has been issued and accepted by such allottees. The Act of May 27, 1908, provides that they may apply for a removal of restrictions on alienation of such allotted lands, but that if such restrictions are removed the lands shall be subject to taxation and other civil burdens.

Under the Act of May 27, 1908, therefore, the allottee may retain his allotted lands subject to restrictions on alienation and hold the same free from taxation, or he may, at his option, apply for a removal of restrictions on alienation of such lands, or any part thereof, and, after his application is granted, the land as to which the same is granted becomes subject to taxation. There certainly could be no denial of a constitutional right by taxing such lands, because they are made taxable, not by the act of Congress, but by the voluntary act of the allottee, in taking his lands out of the exempted class and bringing them within the class subject to taxation.¹⁶

¹⁶ *Pennock v. Franklin County*, 103 U. S. 44, 26 L. Ed. 367; *Goudy v. Meath*, 203 U. S. 146, 27 Sup. Ct. 48, 51 L. Ed. 130; *McMahon v. Welsh*, 11 Kan. 280; *Miami County Com'rs v. Brackenridge*, 12 Kan. 114; *Quinney v. Town of Stockbridge*, 33 Wis. 505; *Territory v. Delinquent Tax List of Bernalillo County*, 12 N. M. 139, 76 Pac. 307; *Missouri River Ft. S. & G. R. Co. v. Morris*, 13 Kan. 302.

§ 298. Taxation of lands allotted under the General Allotment Act.—The General Allotment Act contains no prohibition against the taxation of lands allotted thereunder. Title to such lands is reserved, however, in the United States, with an agreement that they will be conveyed at the end of the trust period, to-wit, twenty-five years, to the allottee or his heirs in fee discharged of such trust and free of all charge or incumbrance whatsoever.

Lands allotted under the provisions of this act have been held by the Supreme Court of the United States not to be subject to state taxation until expiration of the trust period and the conveyance of such lands to the allottee or his heirs by final patent. This exemption is construed as extending, not only to land taxed, but all improvements erected thereon and all personal property furnished by the United States and used by the allottee in the cultivation of such land.¹⁷

Provision has been made by amendments to the General Allotment Act for the issuance of final patent, to Indians found to be competent, certificates of competency which are given the substantial effect of final patents, and that the issuance of such final patent or certificate of competency shall render the lands selected in allotment under the General Allotment Act subject to taxation under the laws of the state in which the lands are located.

Inasmuch as lands allotted under the General Allotment Act are exempted from taxation, not by any specific provision, but by reservation of title in the United States and its obligation to convey at the end of the trust period, there is no reason why Congress has not the authority to make such lands subject to state taxation whenever in its judgment it is proper to do so.

§ 299. Taxation of lands held under trust patents as affected by Act of May 27, 1902.—By the provision of the Act of May 27, 1902, heirs of allottees are authorized to con-

¹⁷ *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532.

vey their inherited lands under certain conditions upon approval of the Secretary of the Interior. By specific provision of this act such lands, when so conveyed, become subject to taxation under the laws of the state or territory where the same are situate.¹⁸

§ 300. Taxation of allotted Indian lands as affected by the Act of May 8, 1906.—Under the Act of May 8, 1906, the Secretary of the Interior is authorized, when he is satisfied that an Indian allottee is competent to manage his own affairs, to at any time cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to taxation of said land shall be removed.¹⁹

The provisions of this act, however, are not applicable to the Indian allotments in the Indian Territory, but are applicable to allotted Indian lands held in trust in other parts of the state of Oklahoma.

§ 301. Taxation of lands allotted under the Absentee Shawnee and Citizen Pottawatomie Allotment Agreements.—The allotment agreements of these two tribes were made separately, but were identical in their terms. The agreements provide that, when allotments are confirmed and approved, the title in each allottee shall be held and protected in every particular in the same manner and to the same extent provided for in the General Allotment Act. This applies the provisions of the General Allotment Act to the allotments made to the members of these tribes, and operates to grant tax exemptions wherever the General Allotment Act operated so to do.

By the provisions of the Act of August 15, 1894, members of either of said tribes to whom a trust patent had been issued, being twenty-one years of age, are authorized to sell and convey any portion of the land covered by such patent in excess of eighty acres, subject to the approval of

¹⁸ United States v. Thurston County (C. C.) 140 Fed. 456.

¹⁹ United States v. Thurston County (C. C.) 140 Fed. 456; United States v. Board of Com'rs of Osage County, Okl. (C. C.) 193 Fed. 485.

the Secretary of the Interior, and the land so sold and conveyed, under the provision of said act, immediately becomes subject to taxation. Nonresident Citizen Pottawatomies are, without approval of the Secretary of the Interior, authorized to sell their entire allotments, and upon such sale they become subject to taxation.²⁰

By section 7 of the Act of May 31, 1902, the provision of the Act of August 15, 1894, was extended to the inherited lands of members of the two tribes; that is to say, they are authorized to sell their inherited lands upon the approval of the Secretary of the Interior and such lands thereupon become subject to taxation.

§ 302. Taxation of lands allotted under the Cheyenne and Arapahoe Allotment Agreement.—The United States, under the Cheyenne and Arapahoe Allotment Agreement, agrees to hold the title of all allottees in trust for the period of twenty-five years in the manner and to the extent provided in the General Allotment Act, and at the expiration of the twenty-five year period to convey the same in fee simple to the allottees or their heirs free from all incumbrances.²¹ This operates to make the provisions of the General Allotment Act applicable as to the taxation of the allotted lands of these tribes.

§ 303. Taxation of lands allotted under the Iowa Allotment Agreement.—The Iowa Allotment Agreement provides that patents shall issue to the allottees, which shall be of the effect and declare that the United States will and does hold the land allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom the allotment is made, or, in case of his death, of his

²⁰ *United States v. Thurston County* (C. C.) 140 Fed. 456; *United States v. Board of Com'rs of Osage County, Okl.* (C. C.) 193 Fed. 485.

²¹ *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532; *United States v. Thurston County* (C. C.) 140 Fed. 456; *United States v. Board of Com'rs of Osage County, Okl.* (C. C.) 193 Fed. 485.

heirs or devisees, and that at the expiration of the trust period the United States will convey the same by patent to such Indian, his heirs or devisees, in fee discharged of any trust and all incumbrances whatsoever.

It is further provided that during said period of 25 years the land so allotted and the improvements thereon shall not be subject to taxation for any purpose whatever by any state, territory, or municipal subdivision thereof.²²

§ 304. Taxation of lands allotted to Kansas or Kaw Indians.—Under the Kansas or Kaw Allotment Agreement 160 acres of land is set apart as a homestead and made non-taxable and inalienable for the period of 25 years from the 1st day of January, 1903, except as otherwise provided in said act. Allotted lands other than the homestead are stipulated to be free from taxation as long as the title remains in the allottee, but not to exceed 25 years.

Unsold town lots are exempt from taxation as long as the title remains in the tribe. The Secretary of the Interior is authorized, at his discretion, upon request of an adult member of the tribe, to issue to such member a certificate authorizing him to sell or convey any or all lands deeded to him by reason of the agreement.

Upon the issuance of such certificate the lands of such member, both homestead and surplus, become immediately subject to taxation and to disposition by the allottee.

No other tax exemptions were granted in the allotment agreement nor in the statute providing for allotment thereunder.²³

§ 305. Taxation of allotted lands of Kickapoo, Modoc, Otoe, Ottawa, Pawnee, Ponca, Seneca, Shawnee, Tonkawa

²² United States v. Rickert, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532; United States v. Thurston County (C. C.) 140 Fed. 456; United States v. Board of Com'rs of Osage County, Okl. (C. C.) 193 Fed. 485.

²³ United States v. Thurston County (C. C.) 140 Fed. 456; United States v. Board of Com'rs of Osage County, Okl. (C. C.) 193 Fed. 485.

and Wyandotte.—The tribal lands of the Kickapoo, Modoc, Otoe, Ottawa, Pawnee, Ponca, Seneca, Shawnee, Tonkawa and Wyandotte Tribes were allotted under the General Allotment Act.

The authority to tax the lands of the allottees of said tribes is controlled by the General Allotment Act and amendments thereto.

Lands of the Kickapoo, Pawnee and Tonkawa Tribes were allotted under agreements providing that the title of the allottee should be held under the conditions and limitations contained in the General Allotment Act. The right to tax the lands of the allottees of the Kickapoos, Pawnees and Tonkawas is, therefore, dependent upon the provision of the General Allotment Act and amendments thereto.²⁴

§ 306. Taxation of lands allotted to the Kiowas, Comanches and Apaches.—The allotment agreement made with the Comanches, Kiowas and Apaches, as approved and ratified by Congress, provides that the allotments made thereunder shall be held in trust by the United States for the allottees respectively for the period of 25 years “in the time and manner and to the extent provided for” in the General Allotment Act.

Under the Act of May 8, 1906, the Secretary is authorized, upon the application of any allottee of any Indian tribe, to issue to such allottee, if he believes him to be competent and capable of managing his own affairs, a patent in fee simple and thereafter all restrictions as to sale, incumbrance, or taxation of said lands shall be removed.²⁵

²⁴ *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532; *United States v. Thurston County* (C. C.) 140 Fed. 456; *United States v. Board of Com'rs of Osage County, Okl.* (C. C.) 193 Fed. 485.

²⁵ *United States v. Thurston County* (C. C.) 140 Fed. 456; *United States v. Board of Com'rs of Osage County, Okl.* (C. C.) 193 Fed. 485.

§ 307. Taxation of lands allotted under the Osage Allotment Agreement.—Under the Osage Allotment Agreement the homestead of the Osage allottee is made inalienable and nontaxable until otherwise provided by act of Congress.

The surplus lands are made inalienable for twenty-five years, except as otherwise provided, but no reference is made to taxation in this connection.

The Secretary of the Interior is authorized, upon petition of any adult member of the tribe, to issue to such member a certificate of competency authorizing him to sell and convey the lands deeded him except his homestead. Such homestead is to remain nontaxable for twenty-five years or during the life of the allottee. Upon the issuance of such certificate of competency the lands of such member, except his homestead, become subject to taxation.

Surplus lands are made nontaxable for three years from the approval of the act, except where certificate of competency shall issue or in case of the death of the allottee.

The Osage Agreement has been construed by the United States Circuit Court for the Western District of Oklahoma as making the homestead of the Osage allottees nontaxable after the death of such allottee until a certificate of competency issues or until Congress otherwise provides, but that surplus lands, exclusive of minerals, are taxable after the expiration of three years from the date of the Osage Allotment Agreement, and that exemptions from taxation and restrictions on alienation usually coexist and continue for the same time; the rule applied being that when Indian lands are alienable they are taxable, and when inalienable nontaxable, unless, in either case, there are controlling special provisions.²⁶

The conclusions found in the opinion of the Circuit Court, so far as applicable to surplus lands, have been approved by the Supreme Court of the state of Oklahoma.²⁷

²⁶ *United States v. Board of Com'rs of Osage County, Okl. (C. C.)* 193 Fed. 485.

²⁷ *Hunter v. Hooper*, 132 Pac. 490.

§ 308. **Taxation of lands allotted to Peoria, Kaskaskia, Piankeshaw, Wea and Western Miami.**—The lands of the Peoria, Kaskaskia, Piankeshaw, Wea and Western Miami Tribes were allotted under an Act of Congress approved March 2, 1889, which provides that land allotted to members of said tribes shall not be subject to levy, sale, taxation, or forfeiture for a period of twenty-five years. On May 27, 1902, so much of the Act of March 2, 1889, as prohibited the sale of the surplus lands of the members of these tribes, was repealed. No reference is made in this repeal to the subject of taxation. The exemptions from levy, sale and taxation in the original act appeared in one sentence and are so connected as to be interdependent. It is possible, therefore, that removal of all restrictions on alienation of the surplus allotments of the allottees of these tribes operated to make the same subject to taxation. This is on the assumption that, unless specifically provided otherwise, where restrictions upon alienation and prohibition against taxation are found in one sentence it is intended that they shall run concurrently, and that a removal of restrictions operates to remove the prohibition against taxation.²⁸

§ 309. **Taxation—Quapaw, allotted lands.**—The Quapaw Allotment Act makes no mention of the subject of taxation or exemptions therefrom. It does provide, however, that allotments shall be inalienable for twenty-five years from and after date of patent. There has been no subsequent legislation directly applicable to the Quapaw Tribe regulating, or attempting to regulate, the taxation of allotted Quapaw lands.

Under the Act of March 3, 1909, the Secretary of the Interior is authorized to remove the restrictions upon alien-

²⁸ Goudy v. Meath, 203 U. S. 146, 27 Sup. Ct. 48, 51 L. Ed. 130; Montana Catholic Missions v. Missoula County, 200 U. S. 118, 26 Sup. Ct. 197, 50 L. Ed. 398; United States v. Board of Com'rs of Osage County, Okl. (C. C.) 193 Fed. 485.

ation of any part or all of the lands allotted to any allottee within the jurisdiction of the Quapaw Indian Agency.

The effect of the prohibition found in the Quapaw Allotment Act is probably such as to prevent the taxation of Quapaw allotted lands during the time they are inalienable.²⁹ Such exemptions, however, being the result of the making of such lands inalienable, the removal of restrictions under the Act of March 3, 1909, by the Secretary of the Interior would subject the lands as to which the restrictions are removed to taxation.³⁰

§ 310. Taxation of lands allotted under the Sac and Fox Allotment Agreements.—The allotment agreement with the Sac and Fox Tribes of Indians providing for the allotment to the citizens of the Sac and Fox Nations provides that patent shall issue for 80 acres of the land designated by the allottee, reciting that the same will be held in trust by the United States for the period of twenty-five years for the sole use and benefit of the allottee or his heirs and that the other 80 acres shall be so held in trust by the President of the United States for the period of five years, or, if he will permit, for the period of fifteen years. No patent in fee is to issue to any person who is an orphan at the time the allotment is made until majority or marriage.³¹ Such lands are not taxable while held in trust by the United States.

§ 311. Taxation of lands allotted under the Tonkawa Allotment Agreement.—Under the Tonkawa Allotment Agreement the lands allotted to the members of that tribe are to be protected by all the conditions, qualifications and limitations contained in the General Allotment Act and the amendment thereof of February 28, 1901.

²⁹ United States v. Rickert, 188 U. S. 432, 23 Sup. Ct. 478, 45 L. Ed. 532.

³⁰ United States v. Thurston County (C. C.) 140 Fed. 456.

³¹ United States v. Rickert, 188 U. S. 432, 23 Sup. Ct. 478, 45 L. Ed. 532; United States v. Thurston County (C. C.) 140 Fed. 456.

The right to tax the allotted lands³² of members of the Tonkawa Tribe is dependent upon the provisions of the General Allotment Agreement and amendments thereto made.

§ 312. Taxation of lands allotted under the Wichita and Affiliated Bands Allotment Agreements.—Under the allotment agreements made with the Wichitas and affiliated bands of Indians the United States agrees to hold the title to the lands allotted to the members of the tribes in trust for a period of twenty-five years in the manner and to the extent provided in the General Allotment Act, and at the expiration of the trust period to convey such land in fee simple to the allottee or his heirs free from all incumbrances.³³ The right to tax the allotted lands of these tribes is dependent upon the General Allotment Act and amendment thereof and legislation supplemental thereto

³² *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 45 L. Ed. 532; *United States v. Thurston County (C. C.)* 140 Fed. 456.

³³ *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 45 L. Ed. 532; *United States v. Thurston County (C. C.)* 140 Fed. 456.

CHAPTER 32

TITLE TO TOWN LOTS

§ 313. Title to town lots and the manner of acquiring and perfecting the same in the Five Civilized Tribes.

314. Townsites—Kansas or Kaw.

315. Townsites—Osage.

316. Townsites—Ottawa Tribe, Quapaw Agency.

317. Townsites—Other reservations in Oklahoma.

§ 313. Title to town lots and the manner of acquiring and perfecting the same in the Five Civilized Tribes.—For many years prior to the beginning of the allotment of the lands of the Five Civilized Tribes, and before any provision had been made for procuring titles to town lots, the white people who were not members of either of the tribes congregated in communities, surveyed and laid out cities and towns, erected residences, business houses, schoolhouses, and other public buildings and improvements.

These towns were laid out and the buildings constructed by permission of some citizen or member of the tribe, and usually under a rental or lease contract. At the time of the making of agreements for the allotment of the lands in severalty to the members of the Five Civilized Tribes, there were hundreds of villages and towns and a number of cities within the domain of the Five Civilized Tribes, representing investments of millions of dollars. These improvements were all erected upon Indian lands, and without any adequate legal protection. The money was thus expended, relying upon the fairness of the Indian, and the disposition of the government to protect those who expended their money and devoted their time and energy to the development of national resources.

In the Choctaw, Chickasaw, Creek, and Cherokee agreements provision was made for the laying out of townsites and the acquiring of title to town lots. The provisions,

though differing in detail, were based upon substantially the same conditions. Under the provisions of all of these agreements the person who owned the improvements on a town lot was given a preference right to purchase the same at a certain per cent. of the appraised value. The lots were appraised by a commission, one member of whom was usually selected by the President of the United States, and the other by the Principal Chief or Governor of the Tribe in which the town or city was located. Provision was made for calling in a third member of the commission if the two thus selected should fail to agree. These commissions determined the value of the lots and who owned the improvements thereon. They also determined, subject to the approval of the Commissioner of Indian Affairs and the Secretary of the Interior, who was entitled to purchase a given lot. Under the majority of agreements it was required, that to entitle a purchaser to purchase at less than the appraised value, he should be the owner of permanent, substantial, and valuable improvements located upon the lot. The agreements usually specifically excluded fences, tillage, and temporary improvements. The commissions were most liberal to the owners of improvements in determining what constituted permanent improvements.

If there was more than one claimant to the right to purchase a lot, the townsite commission heard the claim of such contesting claimants, and recommended to the Secretary of the Interior which of the claimants was in their judgment entitled to be awarded the preference right to purchase. The action of the Secretary upon the question of the preference right to purchase was made final. The courts have, however, held in construing the provisions of some of these agreements that the Secretary's action in determining who should have the preference right to purchase was subject to the same investigation and control by the courts as is the action of the Secretary in dealing with public lands generally.

Practically all controversies, if not all, involving the right to purchase town lots, are settled, and patents have been issued directly to the persons awarded the preference right to purchase. Such patents in the Choctaw and Chickasaw Nations are signed by the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation. In the Creek and Cherokee Nations the patents are signed by the Principal Chief. Payment to the tribes for lots so purchased was made in installments, and no patents issued until final payment had been made.

The titles to city and town lots in the Five Civilized Tribes are much less complicated and much freer from controversy than in the older states. There have been, comparatively speaking, but few transfers that could be made the subject of controversy. It may be truthfully said that titles to town lots in the territory of what was formerly the Cherokee, Choctaw, Chickasaw, Creek and Seminole Nations are more perfect, less complicated, and less open to question than in any of the older states of the Union.

The townsite provisions of the Choctaw and Chickasaw Agreements awarded a preference right to purchase only to the actual owner of substantial and valuable improvements. In the Cherokee and Creek Nations the right to possession as well as the ownership of improvements operates to confer a preference right to purchase. This has somewhat complicated the situation where the right of possession is in the Indian landlord and the ownership of the improvements in the tenant.¹

The matter of acquiring title to town lots in the Seminole Nation is regulated by the Seminole Townsite Act. This act limited the townsites² in the Seminole Nation to one, that of Wewoka.

Occasional judicial controversies have grown out of the action of the townsite commissions in awarding the pref-

¹ *Fraer v. Washington*, 125 Fed. 280, 60 C. C. A. 194.

² See chapter 51.

erence right to persons, and the right of judicial review has been sustained where there was a clear misconception of law or manifest error of fact.³

Cases involving the authority and extent of judicial review of departmental action in awarding preference right to select land in allotment are applicable.⁴

§ 314. **Townsites—Kansas or Kaw.**—The Kaw Agreement reserves from allotment 80 acres, including the buildings then being used by the agency treasurer and other buildings, for townsite purposes, to be surveyed into town lots and sold at public auction to the highest bidder under such rules and regulations as may be prescribed by the Secretary of the Interior. Preference right is given to the members of the tribe to purchase lots upon which they had improvements. The lots not sold are exempted from taxation as long as the title remains in the tribe.

§ 315. **Townsites—Osage.**—An Osage Townsite Commission was created by the Indian Appropriation Act approved March 3, 1905.⁵

The Commission thus created consisted of the United States Indian Agent at the Osage Agency, one commissioner to be appointed by the Chief of the Osage Tribe and one by the Secretary of the Interior.

The act made provision for the segregation, survey and platting of lands for townsite purposes at a number of places. Under this act town lots are scheduled to the own-

³ *Fraer v. Washington*, 125 Fed. 280, 60 C. C. A. 194; *W. O. Whitney Lumber & Grain Co. v. Crabtree*, 166 Fed. 738, 92 C. C. A. 400; *United States v. Rea-Read Mill & Elevator Co.* (C. C.) 171 Fed. 501; *Ross v. Stewart*, 25 Okl. 611, 106 Pac. 870; *Lewis v. Sittle*, 30 Okl. 530, 121 Pac. 1078; *Fawcett v. Hill*, 29 Okl. 461, 118 Pac. 132; *Mitchell v. Bell*, 31 Okl. 117, 120 Pac. 560; *Cochran v. Hocker*, 34 Okl. 233, 124 Pac. 953.

⁴ *Wallace v. Adams*, 143 Fed. 716, 74 C. C. A. 540; *Id.*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547; *Garrett v. Walcott*, 25 Okl. 574, 105 Pac. 848; *Bartlesville Vitrified Brick Co. v. Barker*, 26 Okl. 144, 109 Pac. 72; *Robinson v. Owen*, 30 Okl. 484, 119 Pac. 995; *Summers v. Barks* (Okl.) 127 Pac. 402.

⁵ See chapter 70.

ers of improvements and when purchased and paid for are patented to the purchaser.

§ 316. Townsites—Ottawa Tribe, Quapaw Agency.—The Secretary of the Interior is authorized by a provision of the Indian Appropriation Act of March 3, 1891,⁶ to sell to the Miami Town Company for and on behalf of the Ottawa Tribe of Indians 559.95 acres to be surveyed and sold for townsite purposes. The provisions of the act are as follows:

“That the Secretary of the Interior be, and is hereby, authorized in his discretion to sell to the Miami Town Company, a corporation created under the laws of the state of Kansas, for and on behalf of the Ottawa Tribe of Indians, the north half of the southeast quarter of section twenty-five township twenty-eight north, range twenty-two east; also the southeast quarter of the southeast quarter of said section; also lots five, six, seven, eight, nine, and ten in said section; also the northeast quarter of the southwest quarter of section thirty, township twenty-eight north, range twenty-three east; also lots eight, nine, ten, and eleven in said section; also lots one, two, and three, in said section thirty-one township twenty-eight north, range twenty-three east; also lots one, two, and three, in section thirty-six, township twenty-eight north, range twenty-two east, situated in the Indian Territory, and containing five hundred and fifty-seven and ninety-five one-hundredths acres, more or less.

“That said lands shall be sold to said company at not less than ten dollars per acre, and the proceeds of such sale shall be paid over under the direction of the Secretary of the Interior, to the Ottawa Indians per capita, as per request of said Indians now on file in the Department of the Interior.

“That the said Miami Town Company shall, within ninety days from the approval of this act, file in the General Land Office a plat of said land, showing the same to have been

⁶ 26 Stat. 989-1010, c. 543.

surveyed and divided into lots, blocks, streets, and alleys; and immediately upon filing of said map, and the payment of the said sum of ten dollars per acre, the Secretary of the Interior shall cause a patent to be issued to said company for the several tracts herein described."

The lands to be sold under this act were acquired by the Miami Town Company pursuant thereto and platted and sold to purchasers.

§ 317. Townsites—Other reservations in Oklahoma.—The Absentee Shawnee Agreement provides that there shall be set apart for townsite purposes out of the lands ceded a certain acreage, title to which shall be vested in individual owners under the Kansas Townsite Law. None of the other agreements make any provision for townsites. The executive department, however, had full authority to provide for townsites on the lands ceded by the several tribes and frequently did so under the General Townsite Law.

CHAPTER 33

JURISDICTION OF CONTROVERSIES AFFECTING ALLOTTED INDIAN LANDS

§ 318. Scope of title.

- 319. Jurisdiction of controversies involving the right of persons other than members of the tribes to occupy tribal reservations.
- 320. Jurisdiction of controversies over possession of tribal lands between members of Indian tribes.
- 321. Jurisdiction of the United States courts in the Indian Territory over controversies involving the right of possession of tribal lands.
- 322. Jurisdiction of controversies over allotted Indian lands where title held in trust by the United States.
- 323. Jurisdiction of controversies affecting title or right of possession of allotted lands held in trust by the United States.
- 324. Jurisdiction of courts of the United States as affected by the Judicial Code and amendments thereto.
- 325. Jurisdiction of state courts as dependent upon venue.

§ 318. Scope of title.—It is the purpose to discuss under this title the jurisdiction of the courts, state and federal, over controversies affecting Indian lands. As a preliminary to the discussion of the subject, it is deemed advisable to review at some length the history of the jurisdiction of controversies over the right to occupy lands in tribal reservations and of the remedies for the unlawful trespass upon or occupancy of such tribal lands. This title will trace the evolution from the summary remedy of ejectment by the executive department, through the Indian Police and the United States Army, to the regular trial in a court of justice, involving the title and right of possession to allotted Indian Lands.

§ 319. Jurisdiction of controversies involving the right of persons other than members of the tribes to occupy tribal reservations.—Under section 2147 of the Revised Statutes the Superintendent of Indian Affairs, Indian agents and subagents have authority to remove from the Indian country all persons found therein contrary to law, and the President of the United States is authorized to direct the mili-

tary force to be employed in said removal. Under section 2149 of the Revised Statutes, the Commissioner of Indian Affairs is authorized to require, with the approval of the Secretary of the Interior, a removal from any tribal reservation of any person being there without authority of law, or whose presence within the limits of the reservation may, in the judgment of the Commissioner, be detrimental to the peace and welfare of the Indians, and he may employ for the purpose such force as may be necessary to effect the removal of such person. No person is entitled to go upon or occupy any part of an Indian reservation without the consent of the United States given in the form prescribed in the title of the Revised Statutes "Government of Indian Country." The Department officials, therefore, assumed, and it was held that they had a right to do so, when a person other than a member of the tribes, or an employe of the government, was found within the reservation without a license or authority from a proper officer to be there, he was subject to summary removal under the provisions of the statute above quoted. The courts refused to review the decision of the Secretary that the presence of a person upon the tribal reservation was detrimental to the peace and welfare of the Indians.¹

Many of the tribal reservations consisted of public lands of the United States which were set aside for tribal occupancy. As to these lands the United States possessed full proprietary rights, and were entitled to exercise all of the privileges of ownership thereof, as well as to exercise the authority conferred under sections 2147 and 2150 of the Revised Statutes.

¹ United States v. Sturgeon, 6 Sawy. 29, Fed. Cas. No. 16, 413; 20 Op. Atty. Gen. 245; Morris v. Hitchcock, 194 U. S. 384, 24 Sup. Ct. 712, 48 L. Ed. 1030; United States v. Payne (D. C.) 22 Fed. 426; Cherokee Nation v. Southern Kan. R. Co. (D. C.) 33 Fed. 900; In re Blackbird (D. C.) 109 Fed. 139; Stephens v. Quigley, 126 Fed. 148, 61 C. C. A. 214; Rainbow v. Young, 161 Fed. 835, 88 C. C. A. 653; United States v. Crook (D. C.) 179 Fed. 391.

Wherever leases of Indian reservations or allotted Indian lands were authorized, however, the Department of the Interior was not permitted to summarily adjudge and determine the lease invalid, and that the persons occupying the reservation thereunder were subject to summary ejectment. The remedy of the lease holder in such instances was by suit to enjoin his removal. If his lease was held valid, the removal was enjoined; if invalid, the Department was permitted to proceed.² The United States also might proceed by injunction or other equitable proceedings to remove persons wrongfully occupying tribal reservations, or allotted lands held subject to restrictions on alienation.*

§ 320. Jurisdiction of controversies over possession of tribal lands between members of Indian tribes.—The Cherokee, Choctaw, Chickasaw and Creek Nations each had a recognized government, with constitution, code of laws, executive, legislative, and judicial departments, similar to the constitution, laws, etc., of the various states of the Union. They had regularly established courts, with fixed jurisdiction to try controversies between citizens or members of their own tribe, and between members of their own tribe and other Indians residing among such tribe by consent or upon authority of the Department of the Interior.

Trials were had to the court or to a jury as are had in the various states, and the judgments of such courts were as conclusive in their effect as are those of the several states of the Union, and entitled to the same faith and

² *Renfrow v. United States*, 3 Okl. 161, 41 Pac. 88; *Adams v. Freeman* (Okl.) 50 Pac. 135; *Indian Land & Trust Co. v. Fears*, 22 Okl. 681, 98 Pac. 904; *Maxey v. Wright*, 3 Ind. T. 243, 54 S. W. 807; *Buster & Jones v. Wright*, 5 Ind. T. 404, 82 S. W. 855; *Id.*, 135 Fed. 947, 68 C. C. A. 505; *Zevely v. Welmer*, 5 Ind. T. 646, 82 S. W. 941; *Quigley v. Stephens*, 3 Ind. T. 265, 54 S. W. 814; *Stephens v. Quigley*, 126 Fed. 148, 61 C. C. A. 214; *Ex parte Carter*, 4 Ind. T. 539, 76 S. W. 102; *Indian Land & Trust Co. v. Shoenfelt*, 5 Ind. T. 41, 79 S. W. 134.

* See cases cited under note 1.

credit when drawn in question elsewhere. Controversies between members of other Indian tribes in Oklahoma than those above mentioned were usually determined by the councils of the tribe or by the Indian agent or superintendent in charge.

§ 321. **Jurisdiction of the United States courts in the Indian Territory over controversies involving the right to possession of tribal lands.**—The Act of May 2, 1890, conferred jurisdiction upon the United States courts in the Indian Territory of controversies involving the right of possession to Indian lands, where such controversies were between other than members of the same tribe or nation. The chapter on ejectment, and the statutes regulating forcible entry, forcible detainer, and unlawful detainer procedure, and the relation of landlord and tenant, were extended by such act over the Indian Territory and made applicable to the possessory rights of the members of the Five Civilized Tribes in and to the domain of the said tribes respectively. The basis of a cause of action and the right to interpose a defense was the Indian right of occupancy asserted by the Indian himself, or by a citizen of the United States, who was not a member of the tribe, under some contract or agreement conferring the right of occupancy, made with some member of the tribe. The jurisdiction of the United States court in the Indian Territory was enlarged from time to time by repeals of tribal laws, abolishing tribal courts, and the extension of the general laws in force in the state to allotted Indian lands, except where controlled by allotment agreements with the United States or legislation imposing restrictions on alienation of tribal lands. Many controversies involving the title and right of possession of Indian lands were adjudged and determined by the United States courts in the Indian Territory.

§ 322. **Jurisdiction of controversies over allotted Indian lands where title held in trust by the United States.**—The Choctaw-Chickasaw, Creek and Seminole Agreements con-

ferred jurisdiction upon the United States courts then existing in the Indian Territory, or that might thereafter be created, of all controversies growing out of the title, ownership, occupation, or possession of real estate in the territory occupied by the Choctaw, Chickasaw, Creek and Seminole Tribes. The Cherokee Allotment Agreement contained no provision of this character, but the Cherokee tribal courts had been abolished prior to allotment and United States courts had been prohibited from enforcing any of the laws of the tribes, and by the Act of June 7, 1889, the United States courts in the Indian Territory had been given original exclusive jurisdiction to try and determine all civil cases at law and in equity thereafter instituted in said courts, and the laws of the United States and the state of Arkansas in force in the Indian Territory were made applicable to all persons therein, irrespective of race. The United States courts in the Indian Territory, and their successors, the courts of the state of Oklahoma, have, ever since allotment, had jurisdiction of all controversies affecting the title, occupation, use, and possession, of allotted Indian lands of the allottees of the Five Civilized Tribes. The United States courts in the Indian Territory, and their successors, the courts of the state of Oklahoma, sitting in what was formerly the Indian Territory, had and have jurisdiction of controversies over allotted lands in the Quapaw Reservation where the title is not held in trust by the United States.

The courts of the territory of Oklahoma had, and their successors, the courts of the state of Oklahoma, have, jurisdiction over controversies involving allotted lands in what was formerly the territory of Oklahoma where the title is not held in trust by the United States. The United States District Courts in Oklahoma have jurisdiction of controversies over allotted lands where the title is not held in trust by the United States and where the plaintiff's cause of action is based upon an allotment treaty, agreement, act of Congress, or other law of the United States,

and the requisite amount is involved, or where there is a diversity of citizenship and the requisite amount is involved, or where the United States is a party plaintiff.³

§ 323. Jurisdiction of controversies affecting title or right of possession of allotted lands held in trust by the United States.—The question of the jurisdiction of courts, state and federal, over controversies involving the title to or right of possession of allotted Indian lands where the title is held in trust by the United States is a most difficult and serious one. The courts of the state and of the United States, in a proper case, would have jurisdiction of controversies arising out of the leasing of allotted Indian lands made pursuant to and in accordance with the Act of Congress of February 28, 1891, and similar legislation; actions arising out of such contracts being largely personal in their nature and not being capable of interfering with the obligation of the United States to convey the allotted lands in fee simple to the allottee or his heirs at the end of the trust period, free from any charge or incumbrance. For many years the state courts occasionally and the federal courts frequently took jurisdiction of controversies directly affecting the title or right of possession of lands held in trust by the United States for the benefit of allottees of the several Indian tribes.

The Supreme Court of the United States, construing the Act of August 15, 1894 (c. 290, 28 Stat. 305), providing: "That all persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence and prosecute or defend

³ Taylor v. Anderson (C. C.) 197 Fed. 383; Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820.

any action, suit, or proceeding in relation to their right thereto, in the proper circuit court of the United States"—said: "The Rickert Case settled that, as the necessary result of the legislation of Congress, the United States retained such control over allotments as was essential to cause the allotted land to inure during the period in which the land was to be held in trust 'for the sole use and benefit of the allottees.' As observed in the Smith Case, 194 U. S. 408, 24 Sup. Ct. 676, 48 L. Ed. 1039, prior to the passage of the act of 1894, 'the sole authority for settling disputes concerning allotments resided in the Secretary of the Interior.' This being settled, it follows that prior to the Act of Congress of 1894 controversies necessarily involving a determination of the title and incidentally of the right to the possession of Indian allotments while the same were held in trust by the United States were not primarily cognizable by any court, either state or federal. It results, therefore, that the Act of Congress of 1894, which delegated to the courts of the United States the power to determine such questions, cannot be construed as having conferred upon the state courts the authority to pass upon federal questions over which, prior to the Act of 1894, no court had any authority. The purpose of the Act of 1894 to continue the exclusive federal control over the subject is manifested by the provision of that act, which commands that a judgment or decree rendered in any such controversy shall be certified by the court to the Secretary of the Interior. By this provision, as pointed out in the Smith Case, *supra*, the United States consented to submit its interest in the trust estate and the future control of its conduct concerning the same to the result of the decree of the courts of the United States, a power which such courts could alone exercise by virtue of the consent given by the act." ⁴

⁴ *McKay v. Kalyton*, 204 U. S. 458-468, 27 Sup. Ct. 346, 51 L. Ed. 566.

The Supreme Court of the United States thereupon reversed the judgment of the Supreme Court of Oregon, which had determined who was entitled to take by inheritance allotted lands in the Umatilla Reservation, allotted under Act of Congress approved March 3, 1885 (23 Stat. 340, c. 319), upon the grounds that the courts of the state of Oregon were without jurisdiction to determine heirship of allotted Indian lands held in trust by the United States and thereby determine the title and right of possession thereto.

By the Act of June 25, 1910, jurisdiction to determine heirship, if it ever existed in either federal or state courts as to allotted lands held in trust by the United States, was divested, and exclusive jurisdiction to determine such heirship was invested in the Secretary of the Interior as to all allotted lands held in trust except those located in Oklahoma.

Whether jurisdiction to determine heirship of allotted Indian lands held in trust by the United States was ever invested in the Circuit or District Courts of the United States is a question of grave doubt, upon which there seems to have been a substantial difference of opinion among the state and federal courts.⁵

§ 324. Jurisdiction of courts of the United States as affected by the Judicial Code and amendments thereto.— Paragraph 24 of section 24 of the Judicial Code (Act March 3, 1911, c. 231, 36 Stat. 1094 [U. S. Comp. St. Supp. 1911, p. 139]), as amended December 21, 1911 (c. 5, 37 Stat. 46), provides that United States District Courts shall have original jurisdiction:

“Of all actions, suits, or proceedings involving the right

⁵ Hy-yu-tse-mil-kin v. Smith, 194 U. S. 413, 24 Sup. Ct. 676, 48 L. Ed. 1039; Patawa v. United States (C. C.) 132 Fed. 894; Smith v. United States (C. C.) 142 Fed. 226; Bond v. United States (C. C.) 181 Fed. 613; Parr v. United States (C. C.) 132 Fed. 1004; Pel-ata-yakot v. United States, 188 Fed. 387; Parr v. Colfax, 197 Fed. 303, 117 C. C. A. 48; Reed v. Clinton, 23 Okl. 610, 101 Pac. 1055; Mosgrove v. Harper, 33 Or. 252, 54 Pac. 187.

of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

“And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands now or heretofore held by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency: Provided, that the right of appeal shall be allowed to either party as in other cases.”

This paragraph is a modification of the Act of February 6, 1901 (31 Stat. 760, c 217), with the exclusion therefrom of the Five Civilized Tribes, the Osage Nation of Indians, and the lands in the Quapaw Indian Agency. This, however, does not deprive the United States of authority to maintain a suit in the District Court of the United States to cancel a conveyance of allotted Indian lands held subject to restriction on alienation on the ground that such conveyance was made in violation of a law of the United States, or to institute and maintain in the District Court of the United States, during the period of restrictions on alienation, any other action necessary to secure to the allottee an unincumbered title and an undisturbed use of his allotment.†

§ 325. Jurisdiction of state courts as dependent upon venue.—Under section 10 of the Organic Act creating the territory of Oklahoma,⁶ jurisdiction of actions involving title to land was vested in the territorial district courts, which courts possessed and exercised general common-law and chancery jurisdiction. Actions, however, under said

†Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820.

⁶ Act May 2, 1890, c. 182, 26 Stat. 81.

act, could be entertained by a district court only when the defendants or some one of them resided or was found in the county in which the action was instituted.

Section 3920 of the Statutes of 1893 provided that every action for the recovery of real property or any estate or interest therein, or the determination in any form of any such right or interest therein, must be brought in the county in which the subject of the action was situated. This statute was held to be invalid because in conflict with the Organic Act, which required all actions to be brought in the county in which the defendant or some one of the defendants resided or was found.⁷

No doubt, if a defendant resided and was served without the county, but entered his appearance without raising the question of jurisdiction, the court had authority to proceed to judgment; but it was not sufficient to confer jurisdiction that the subject-matter of the litigation was located in the county in which the suit was instituted.

Under section 10 of article 7 of the Constitution of Oklahoma⁸ the district courts of the state are vested with original jurisdiction to try all controversies involving title to lands.

The jurisdiction of such courts is somewhat enlarged by the Revision of the Statutes of 1910.⁹ Superior courts have also been created in several counties of the state and are invested with jurisdiction concurrent with district courts in all proceedings, causes and matters.¹⁰

All difficulties arising by reason of the conflict of the Organic Act and the statute prescribing venue of actions affecting real property were removed by an emergency act of the Legislature approved April 28, 1908.¹¹ Under this

⁷ *Burke v. Malaby*, 14 Okl. 650, 78 Pac. 105; *Mouldin v. Rice*, 19 Okl. 589, 91 Pac. 1032.

⁸ *Williams' Annotated Constitution and Enabling Act*, § 195.

⁹ Rev. Laws 1910, c. 19, §§ 1778-1798.

¹⁰ Rev. Laws 1910, § 1798.

¹¹ Rev. Laws 1910, §§ 4671, 4672.

act all actions for the recovery of real property or any estate or interest therein, for the determination in any form of any such right or interest, for the partition of real property, for the sale of real property under a mortgage, lien or other incumbrance or charge, and to quiet title to, establish a trust in, remove a cloud on, set aside a conveyance of, or to set aside an agreement to convey real property, must be brought in the county in which the subject-matter of the action is situated.

If the subject-matter of the action be an entire tract situated in two or more counties, or separate tracts situated in two or more counties, any action, except to recover possession thereof, may be brought in any county in which any one of the tracts or any part thereof may be located. If, however, the action is one for the recovery of possession of real estate, and there are separate tracts in different counties, separate actions must be instituted for the recovery of each. An action to compel specific performance of a contract to sell real estate may be brought in the county in which the land lies, or in which the defendants or any one of them reside or may be summoned.

CHAPTER 34

ACTIONS AFFECTING INDIAN LANDS

- § 326. Actions affecting Indian lands—Who may maintain.
- 327. Actions for the recovery of allotted Indian lands.
- 328. Suits to establish trusts as applied to Indian lands.
- 329. Limitation of actions to recover allotted Indian lands.
- 330. Actions to foreclose mortgages, liens, etc
- 331. Partition.
- 332. Finality of judgments in actions involving title to allotted Indian lands as to parties and their privies in interest.
- 333. Finality of judgment affecting title to allotted Indian Lands as against the United States.

§ 326. Actions affecting Indian lands—Who may maintain.—An allottee, his heir, or lawful grantee, may maintain an action in a District Court of the United States or of the state of Oklahoma to recover possession of, or quiet title to, or remove a cloud from, allotted Indian land. Where such land is subject to restrictions on alienation, the United States may, as a party plaintiff, maintain an action in its own name on behalf of the allottee to recover possession, quiet title, or cancel a conveyance made, or incumbrance suffered, in violation of an allotment agreement or statute imposing restrictions on alienation.

The Supreme Court of the United States said in reference to the right of the United States to maintain an action of the character mentioned that:¹

“During the continuance of this guardianship the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the security of the Indians cannot be gainsaid. While relating to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed as a part of its plan of distribution is distinctly an interest of the United States. A review of its dealings with the tribes permits no other conclusion.

¹ *Heckman v. United States*, 224 U. S. 413, 437, 438, 444–446, 32 Sup. Ct. 424, 434, 56 L. Ed. 820.

* * * But this object could not be accomplished if the enforcement were left to the Indians themselves. It is no answer to say that conveyances obtained in violation of restrictions would be void. That, of course, is true, and yet, by means of the conveyances and the consequent assertion of rights of ownership by the grantees, the Indians might be deprived of the practical benefits of their allotments. It was the intent of Congress that, for their sustenance and as a fitting aid to their progress, they should be secure in their possession during the period specified and should actually hold and enjoy the allotted lands.

* * * A transfer of the allotments is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States. * * * The authority to enforce restrictions of this character is the necessary complement of the power to impose them. Whether these restrictions upon the alienation of the allotted lands had been violated and the alleged conveyances were void, was a justiciable question; and in order that it might properly discharge its duty, and that it might obtain adequate relief, suited to the nature of the case in accordance with the principles of equity, the United States was entitled to invoke the equity jurisdiction of its courts. It was not essential that it should have a pecuniary interest in the controversy."

In answer to the contention that the allottees were necessary parties to a proceeding in which their rights were to be adjudicated and determined, in order that the judgment might be conclusive as to them, the Supreme Court said:

"The argument necessarily proceeds upon the assumption that the representation of these Indians by the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their protection. This position

is wholly untenable. There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents—whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not depend upon the Indian's acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty.

“When the United States instituted this suit it undertook to represent, and did represent, the Indian grantors whose conveyances it sought to cancel. It was not necessary to make these grantors parties, for the government was in court on their behalf. Their presence as parties could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances. As by the act of Congress they were precluded from alienating their lands, they were likewise precluded from taking any position in the legal proceedings instituted by the government to enforce the restrictions which would render such proceedings ineffectual or give support to the prohibited acts. The cause could not be dismissed upon their consent; they could not compromise it; nor could they assume any attitude with respect to their interest which would derogate from its complete representation by the United States. This is involved necessarily in the conclusion that the United States is entitled to sue, and in the nature and purpose of the suit.

“These considerations also dispose of the contention that by reason of the absence of the grantors as parties, the grantees are placed in danger of double litigation; so that if they should succeed here they would still be exposed to suit by the allottees. It is not pertinent to comment upon the improbability of the contingency, if it exists in legal

contemplation. But if the United States, representing the owners of restricted lands, is entitled to bring a suit of this character, it must follow that the decree will bind not only the United States, but the Indians whom it represents in the litigation. This consequence is involved in the representation."

The court had said in a previous case:

"That Congress may enforce and protect any condition which it attaches to any of its grants. This it may do by appropriate proceedings in either a national or a state court."²

Suits for the protection of Indian allottees have been uniformly brought by the United States in its own courts, but as a matter of preference, and not because it has not the right to invoke the jurisdiction of the state courts.

§ 327. Actions for the recovery of allotted Indian lands.—Not only may an allottee to whom a patent in fee has issued maintain an action for the recovery of the lands patented, but he may do so prior to the issuance of the patent, and prior even to the issuance of an allotment certificate. The selection of the land in allotment and the acceptance of such selection by the Department operates to segregate the land from the tribal domain, converts it into individual ownership and vests in the allottee a full equitable title. Such title may be the basis of an action in ejectment for the recovery of the property or an action to quiet title thereto or to remove a cloud from title. The equitable title thus acquired is as effective as a cause of action or defense against others than the government of the United States as is the full legal title.³

§ 328. Suits to establish trusts as applied to Indian lands.—The Secretary of the Interior, in his own proper

² In re Heff, 197 U. S. 488-509, 25 Sup. Ct. 506, 512, 49 L. Ed. 848.

³ Wallace v. Adams, 143 Fed. 716, 74 C. C. A. 540; Godfrey v. Iowa Land & Trust Co., 21 Okl. 293, 95 Pac. 792; Sorrells v. Jones, 26 Okl. 569, 110 Pac. 743; Ballinger v. United States ex rel. Frost, 216 U. S. 240, 30 Sup. Ct. 338, 54 L. Ed. 464.

person, and acting through his subordinate departmental officials, has exclusive authority to adjudge as between different contestants asserting the right to take lands in allotment to whom such lands shall be allotted. He had a similar jurisdiction under the townsite acts contained in the various agreements to determine which of the contestants should be awarded the preference right to purchase such lands. Suits may be maintained in the courts by a member of the tribe entitled to take land in allotment against the allottee to whom the same has been patented to have the allottee adjudged to hold the patented land in trust for his use and benefit. The departmental decision can be avoided and the land charged with the trust in his favor, only when upon the facts found, conceded, or established at the hearing before the department, its officers fell into an error in the construction of the law which caused them to refuse to issue the patent to him and give it to another, or that through fraud or gross mistake they fell into a misapprehension of the facts proven. If fraud or gross mistake is relied upon, he must plead and prove, not only that there was a mistake, but the facts before the department from which the mistake resulted, the particular mistake that was made, the way in which it occurred, and the fraud, if any, which induced such action, before the court can charge lands with a trust in his favor.⁴

§ 329. Limitation of actions to recover allotted Indian lands.—Not only is every Indian in Oklahoma a citizen of the United States and of the state and subject to its laws, both civil and criminal, except in certain particular cases where the laws of the United States are supreme and prevail, but such is the case generally. Wherever an Indian who is a citizen of the state and of the United States holds lands free from restrictions on alienation, he is amenable

⁴ Wallace v. Adams, 143 Fed. 716, 74 C. C. A. 540; Garrett v. Walcott, 25 Okl. 574, 105 Pac. 648; Bartlesville Vitriified Brick Co. v. Barker, 26 Okl. 144, 109 Pac. 72; Robinson v. Owen, 30 Okl. 484, 119 Pac. 995; Summers v. Barks (Okl.) 127 Pac. 402.

to the statute of limitations so far as his allotted and inherited lands are concerned as any other landowner in the state. Wherever the title to allotted lands is held in the United States for the use and benefit of the allottee, the statute of limitations of the state in which the lands are located does not begin to run until the conveyance of the land in fee or the removal of restrictions on alienation. Where allotted lands, however, are conveyed in fee to the allottee, subject to restrictions on alienation, a more difficult question is presented. It not infrequently happens that the right of alienation is dependent upon some matter of fact and not upon a question of law. When does the statute of limitations begin to run as against the conveyance of allotted or inherited Indian lands held subject to restrictions on alienation? The allottees of the Five Civilized Tribes present an example of this condition, not only in Oklahoma, but for the entire United States. The question has been directly presented to the Supreme Court of the United States in two cases.⁵ In both of these cases the lands when conveyed were subject to restrictions on alienation. In both cases the trial court had sustained a plea of the statute of limitations, in the first case upon demurrer, and in the last case upon the trial of the cause, and the judgments of the trial court were affirmed in both cases, but without definitely settling whether the statute of limitations ran during the restricted period. In addition to a denial of the application of the statute of limitations by the plaintiff, it was insisted that a conveyance in violation of restrictions on alienation did not constitute color of title upon which to base a claim of adverse possession. The court said that the plaintiffs and their grantors acted in good faith in making the purchase, taking the deed, and in paying the consideration, and had no actual notice of the defect in the title of the grantor. The court

⁵ *Felix v. Patrick*, 145 U. S. 317, 12 Sup. Ct. 862, 36 L. Ed. 719; *Schrimscher v. Stockton*, 183 U. S. 290, 22 Sup. Ct. 107, 46 L. Ed. 203.

further said: "It is true, if the grantees had examined the Rogers patent, they would have discovered the restraint upon his alienation of the land; but it is too much to say that a deed, valid upon its face, and taken in good faith, for a valuable consideration, without actual notice of the facts, does not give color of title."

It has been held by other courts of high authority that the statute of limitations does not begin to run until the expiration of restrictions on alienation.⁶ There are other cases dealing with this subject, too numerous to discuss in detail, but to which reference is made.⁷ It is difficult to deduce any fixed rule from the conflicting decisions. The courts have sometimes applied the doctrine of laches when there has been a substantial change in conditions, notwithstanding the full period of the statute has not run since the expiration of restrictions on alienation.

§ 330. Actions to foreclose mortgages, liens, etc.—Suits to foreclose mortgages, liens, etc., on allotted or inherited Indian lands may be maintained when the lands are alienable,⁸ but cannot be maintained to secure a foreclosure, establish a lien, or otherwise encumber the title of lands held subject to restrictions on alienation.⁹ A me-

⁶ *Goodrum v. Buffalo*, 162 Fed. 817, 89 C. C. A. 525; *United States v. Bellm* (C. C.) 182 Fed. 161; *Laughton v. Nadeau* (C. C.) 75 Fed. 789.

⁷ *Krause v. Means*, 12 Kan. 335; *Lemert v. Barnes*, 18 Kan. 9; *Maynes v. Veale*, 20 Kan. 374; *Forbes v. Higginbotham*, 44 Kan. 94, 24 Pac. 348; *Schrimpscher v. Stockton*, 58 Kan. 758, 51 Pac. 276; *New Orleans, J. & G. N. Ry. Co. v. Moye*, 39 Miss. 374; *Taylor v. Brown*, 5 Dak. 335, 40 N. W. 525; *Kreuger v. Schultz*, 6 N. D. 310, 70 N. W. 269; *Murphy v. Pierce*, 17 S. D. 207, 95 N. W. 925; *Murphy v. Nelson*, 19 S. D. 197, 102 N. W. 691; *Shepard v. Northwestern Life Ins. Co.* (C. C.) 40 Fed. 346; *Smythe v. Henry* (C. C.) 41 Fed. 705; *Sheldon v. Donohoe*, 40 Kan. 346, 19 Pac. 901.

⁸ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Landrum v. Graham*, 22 Okl. 458, 98 Pac. 432; *Frame v. Bivens* (C. C.) 189 Fed. 785.

⁹ *Krause v. Means*, 12 Kan. 335; *Maynes v. Veale*, 20 Kan. 374; *Farrington v. Wilson*, 29 Wis. 383; *Landrum v. Graham*, 22 Okl. 458, 98 Pac. 432.

chanic's lien cannot be enforced for materials and supplies used in constructing a building upon nonalienable allotted Indian land.¹⁰

§ 331. **Partition.**—Under the General Allotment Act the laws of descent and partition in force in the state where allotted lands are located are made applicable. This provision confers upon the state courts full authority to partition in kind allotted Indian lands, but does not authorize the sale of inalienable lands where not capable of partition in kind for the purpose of distributing the proceeds among the joint owners of the land.¹¹ There seems to be much diversity of opinion, as evidenced by the adjudged cases from states having constitutional and statutory provisions similar to those in Oklahoma, as to jurisdiction in partition proceedings where the lands to be partitioned are inherited and the estate of the ancestor is being administered in the courts of the state in which the lands are located.¹²

§ 332. **Finality of judgments in actions involving title to allotted Indian land as to parties and their privies in interest.**—A judgment in a proceeding involving the title to allotted Indian lands, where the court has jurisdiction of the subject-matter and of the person of the litigants, is entitled to the same faith and credit as a final adjudication of the matters involved as such judgment would be if the parties were not Indians and if the lands involved were not Indian lands.

¹⁰ *Keel v. Ingersoll*, 27 Okl. 117, 111 Pac. 214.

¹¹ *United States v. Bellm* (C. C.) 182 Fed. 161.

¹² *Thompson v. Tolmle*, 2 Pet. 157, 7 L. Ed. 381; *Davis v. Caruthers*, 22 Okl. 323, 97 Pac. 581; *Winch v. Tobin*, 107 Ill. 212; *Deck v. Gerke*, 12 Cal. 433, 73 Am. Dec. 558; *In re Bowen's Will*, 34 Cal. 682; *In re Tomlinson's Estate*, 35 Cal. 509; *McDaniel v. Pattison*, 98 Cal. 86, 27 Pac. 651, 32 Pac. 805; *Auguisola v. Arnaz*, 51 Cal. 435; *Bush v. Lindsey*, 44 Cal. 121; *Freeman on Cotenancy and Partition*, § 553; *Robinson v. Fair*, 128 U. S. 53, 9 Sup. Ct. 30, 32 L. Ed. 415; *Wood v. Myrick*, 16 Minn. 494 (Gil. 447); *MaHarry v. Eatman*, 29 Okl. 46, 116 Pac. 935; *Tlger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Ferris v. Higley*, 20 Wall. 375, 22 L. Ed. 383.

This statement is perhaps subject to the limitation that the title to the land has passed from the United States or the tribe, as the case may be, and that the litigation is in good faith, adversary litigation, and that the court is not made the instrument by collusion or other voluntary act of the parties of making effective an agreement in violation of a law imposing restrictions on alienation.

In a recent case pending in the Supreme Court of Oklahoma, the right of an heir of an Indian allottee to have disregarded a judgment in a previous proceeding upon the ground that it was in error because it had been held that lands were free from restrictions on alienation, when they were in fact subject to restrictions on alienation, was involved, and in denying such right the Supreme Court of Oklahoma used the following language:¹³ "In the case at bar all parties thereto were *sui generis* [juris], the plaintiff in error, Genevieve Wiley, a minor, prosecuting her action by her legal guardian as the laws of the state provided. (2 Revised Laws of Oklahoma 1910, § 4686.) The judgment assailed here was rendered upon the pleadings and issues made after all the parties had been brought in by due process. The district court had jurisdiction not only of the person, but also of the subject-matter, or had the power to determine the validity of the deed or whether the restrictions were off of the land in controversy. Its action was reviewable, not only by this court, but also by the Supreme Court of the United States by proceedings in error or writ of error. No such remedy was invoked. For it to be contended that in this jurisdiction by any means other than by an appeal or proceeding in error said judgment could be reviewed is utterly without foundation."

The United States Circuit Court of Appeals for the Eighth Circuit has held¹⁴ that a judgment of the United States court for the Indian Territory in an action involving title

¹³ *Wiley v. Edmondson*, 133 Pac. 38.

¹⁴ *Goodrum v. Buffalo*, 162 Fed. 817, 89 C. C. A. 525.

to allotted Quapaw lands was not *res adjudicata* as against the grantor who was the plaintiff in both actions. This conclusion was based chiefly upon the fact that the jurisdiction of the court in the first instance was not properly invoked; that an allottee who held his land subject to restrictions on alienation could not submit an agreed case involving his right to alienate his lands. In addition thereto, the members of the Quapaw Tribe of Indians, parties to the suit, were not citizens of the United States and were not *sui juris*. The court said: "It should be understood, once for all, that no scheme or device, however ingenious or plausible, concocted by any person, can avail to divest the Indians of the title to their allotted lands within the period of limitation prescribed by Congress."

The condemnation visited by the court upon the attempt to evade or destroy the effect of restrictions on alienation will appeal to the conscience and judgment of all. There are certain parts of the opinion, however, which, in view of the disposition of the cause upon other questions, may be treated as dictum. They are wholly subversive of the doctrine of *res adjudicata* as applied to judgments affecting Indian lands.

The trial court in the first instance in the Goodrum Case held that the restriction on alienation expired at the death of the allottee. The Circuit Court of Appeals held that such restriction was for a definite period, and did not expire upon the death of the allottee, and indicated that the trial court was without jurisdiction in the first instance to decide the case otherwise than it was decided by the Circuit Court of Appeals.

To hold that a particular judgment is void because the jurisdictional requirements have not been complied with in submitting a case is wholly different from ruling that the effect of a judgment in a case in which the court has jurisdiction loses its force as *res adjudicata* because of some erroneous view of the judge rendering the judgment. No

authority can be found holding that the validity of a judgment may be denied, or its force and effect limited, merely because of error of law in the proceedings resulting in such judgment. The jurisdiction of the court is in no wise dependent upon the correctness of its conclusion.

If a court has jurisdiction to enter a correct judgment, it likewise has jurisdiction to enter an erroneous one, provided the error does not carry the judgment beyond the jurisdiction of the court.

§ 333. **Finality of judgments affecting title to allotted Indian lands as against the United States.**—The United States District Court for the Eastern District of Oklahoma has held in two cases¹⁵ that a judgment regularly entered against an Indian allottee, seeking to recover possession of his allotted lands on the ground that his conveyance was void because alienation was prohibited, is not *res adjudicata* as against a subsequent proceeding by the United States to cancel the same conveyance by the allottee upon the same ground. And the judgment of the District Court of the United States for the Eastern District of Oklahoma in the first of the two cases has been affirmed by the Circuit Court of Appeals for the Eighth Circuit.¹⁶

The affirmance, however, was based upon that part of the opinion of the same court in a previous case¹⁷ which has since been declared unsound and in effect overruled by the Supreme Court of the United States.¹⁸

Indian allottees in Oklahoma are, by congressional legislation and the state Constitution, citizens of both the United States and the state. As such they are entitled to and enjoy all of the privileges and benefits of section 6 of

¹⁵ *United States v. Rundell* (C. C.) 181 Fed. 887; *United States v. Dowden* (C. C.) 194 F. 475-485.

¹⁶ *Bowling v. United States*, 191 Fed. 19, 111 C. C. A. 561.

¹⁷ *United States v. Allen*, 179 Fed. 13, 103 C. C. A. 1.

¹⁸ *Heckman v. United States*, 224 U. S. 413-444, 32 Sup. Ct. 424, 56 L. Ed. 820.

article 2 of the state Constitution, which is as follows:¹⁹ "The courts of justice of the state shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

It was asserted in the Circuit Court of Appeals, in what is known as the "Thirty Thousand Land Suits," and held by that court, that a judgment, if rendered against the United States, was not *res adjudicata* as against the allottee upon the identical cause of action if he saw fit to assert the same; but the Supreme Court of the United States declared such position untenable in the following language:²⁰

"It is further urged that there is a defect of parties, on account of the absence of the Indian grantors. It is said that they are the owners of the lands, and hence sustain such a relation to the controversy that final decree cannot be made without affecting their interest. *Shields v. Barrow*, 17 How. 130, 139, 15 L. Ed. 158; *Williams v. Bankhead*, 19 Wall. 563, 22 L. Ed. 184.

"The argument necessarily proceeds upon the assumption that the representation of these Indians by the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their protection. This position is wholly untenable. There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents—whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not depend upon the Indians'

¹⁹ *Williams' Ann. Constitution and Enabling Act*, § 14.

²⁰ *Heckman v. United States*, 224 U. S. 413-444, 32 Sup. Ct. 424, 434, 56 L. Ed. 820.

acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty.

“When the United States instituted this suit, it undertook to represent, and did represent, the Indian grantors whose conveyances it sought to cancel. It was not necessary to make these grantors parties, for the government was in court on their behalf. Their presence as parties could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances. As by the act of Congress they were precluded from alienating their lands, they were likewise precluded from taking any position in the legal proceedings instituted by the government to enforce the restrictions which would render such proceedings ineffectual or give support to the prohibited acts. The cause could not be dismissed upon their consent; they could not compromise it; nor could they assume any attitude with respect to their interest which would derogate from its complete representation by the United States. This is involved necessarily in the conclusion that the United States is entitled to sue, and in the nature and purpose of the suit.

“These considerations also dispose of the contention that by reason of the absence of the grantors as parties, the grantees are placed in danger of double litigation; so that if they should succeed here they would still be exposed to suit by the allottees. It is not pertinent to comment upon the improbability of the contingency, if it exists in legal contemplation. But if the United States, representing the owners of restricted lands, is entitled to bring a suit of this character, it must follow that the decree will bind not only the United States, but the Indians whom it represents in the litigation. This consequence is involved in the representa-

tion. *Kerrison v. Stewart*, 93 U. S. 155, 160, 23 L. Ed. 843; *Shaw v. Little Rock, & Ft. S. R. Co.*, 100 U. S. 605, 611, 25 L. Ed. 757; *Beals v. Illinois, M. & T. R. Co.*, 133 U. S. 290, 295, 10 Sup. Ct. 314, 33 L. Ed. 608. And it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts to cancel conveyances in violation of the restrictions prescribed by Congress, these wards should themselves be permitted to relitigate the question.

"In what cases the United States will undertake to represent Indian owners of restricted lands in suits of this sort is left under the acts of Congress to the discretion of the Executive Department. The allottee may be permitted to bring his own action, or if so brought the United States may aid him in its conduct, as in the *Tiger Case*. And, as already noted, the Act of May 27, 1908, makes provision for proceedings by the representatives of the Secretary of the Interior in the name of the allottee. But in the opportunities thus afforded there is no room for the vexation of repeated litigation of the same controversy. And when the United States itself undertakes to represent the allottees of lands under restriction, and brings suit to cancel prohibited transfers, such action necessarily precludes the prosecution by the allottees of any other suit for a similar purpose relating to the same property."

The *Tiger Case*, referred to in the above quotation,²¹ was a suit instituted by *Marche Tiger* against the *Western Investment Company* to recover possession of certain inherited allotted Indian lands, upon the ground that he conveyed the same in violation of the *Creek Agreement*, imposing restrictions on alienation. The litigation was conducted by *Tiger* in his own proper person, and through his own counsel, and without representation by the United States; the result being a judgment of the Supreme Court of the United States holding the conveyance void.

²¹ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738.

Suppose the result had been otherwise; could the United States then have instituted a suit in the trial court upon the same ground and against the same party, and have again litigated the same question through to the Supreme Court of the United States?

It seems to state the question is to answer it. There is no difference in dignity or finality between the judgment of a state and a federal court, each having jurisdiction of the subject-matter and the parties. Neither court possesses the right to review in a collateral proceeding the judgment or decree of the other in the exercise of its proper jurisdiction, nor is there any reason why, when the United States permits an Indian allottee to prosecute his own litigation to final judgment, where it might do so, it should thereafter be permitted in an independent proceeding to disregard the judgment in the original proceeding to which the Indian allottee was a party and had the lawful right to prosecute, and of which the trial court had jurisdiction, and in which it had the lawful right to adjudge the merits of the controversy. Notwithstanding the great respect which the author has for the judgment of the judges of the Circuit Court of Appeals for the Eighth Circuit and of the judge of the United States District Court for the Eastern District of Oklahoma, he believes those courts in error in holding that a judgment in a cause prosecuted in good faith by an allottee in a court having jurisdiction of the subject-matter and the parties is not *res adjudicata* as against the United States in later proceedings involving the same subject-matter.

The Supreme Court declared in the Heckman Case that it must follow, from the fact that the United States had the right to maintain the suit, and that "in the opportunities thus afforded there is no room for the vexation of repeated litigation of the same controversy," that the decree would bind not only the United States but the Indian. Must it not, under the same rule, necessarily follow that, if the Indian has the right to maintain the suit, the decree binds the United States?

CHAPTER 35

ABSTRACTS OF TITLE

- § 334. Scope of discussion.
- 335. Execution of conveyance.
- 336. Date of conveyance.
- 337. Acknowledgment.
- 338. Order removing restrictions on alienation.
- 339. Approval of conveyance.
- 340. Certificate of competency.
- 341. Age and quantum of Indian blood.
- 342. Death.
- 343. Descent.

§ 334. **Scope of discussion.**—The discussion under this title will be limited to the features of abstracting peculiar to allotted Indian lands, including those of all of the tribes located in the state of Oklahoma. Activities in the sale and other disposition of allotted Indian lands results in the profession being called upon daily to determine from an abstract the sufficiency of the title presented for transfer.

It is the purpose here to make such suggestions as may be of practical service in the discharge of these duties.

§ 335. **Execution of conveyance.**—A large number of the members of Indian tribes in Oklahoma sign by mark. They either cannot or will not sign their name in the ordinary manner. The abstract should show the manner of execution, by copying the signatures and the indorsement of the witness or witnesses thereto.

§ 336. **Date of conveyance.**—The date of the conveyance is a most important factor in determining the validity thereof and its effectiveness as passing title. Lands are sometimes inalienable on a given day and alienable on the succeeding day. In a few instances lands have been alienable without restrictions on a given day and either inalienable or alienable subject to certain restrictions on the succeeding day. It is not only necessary that the date of the deed be shown in the abstract, but this date should be confirmed

by showing the date of the acknowledgment of the conveyance.

§ 337. **Acknowledgment.**—The forms of certificates of acknowledgments in the Indian Territory, prior to statehood, were not as simple as in the territory and state of Oklahoma.

A strict compliance with the provisions of the Arkansas statute on the subject of acknowledgments was necessary to the protection of the grantee, under the statute as construed by the Supreme Court of Arkansas before its extension over the Indian Territory. It is always safer to have the certificate of acknowledgment copied in full in the abstract.

§ 338. **Order removing restrictions on alienation.**—The order of the Secretary of the Interior removing restrictions on alienation should either be indorsed upon or accompany the conveyance and be recorded therewith. Such order is sometimes effective from date, and at other times made effective a certain time after date. It is in some cases limited in its effect, and in others unlimited. It is desirable that the order removing restrictions should be copied in full in the abstract.

§ 339. **Approval of conveyance.**—Under some of the allotment acts and agreements conveyances are required to be approved by the Secretary of the Interior, and by subsequent legislation some are required to be approved by the county court. The approval in either instance should accompany and be recorded with the conveyance approved. The approval by the county court should be a certified copy of the order of approval from the records of the court. Approvals should be set out in full in the abstract.

§ 340. **Certificate of competency.**—Certificates of competency are authorized to be issued by a number of allotment agreements and allotment acts, and also by subsequent legislation. The certificate of competency is sometimes as broad and operative to remove all restrictions on

alienation as is an order removing restrictions. In other cases it is of limited effect. It is preferable that the certificate of competency be reproduced in full in the abstract.

§ 341. **Age and quantum of Indian blood.**—Perhaps all abstracters have the final rolls of the citizens and freedmen of the Five Civilized Tribes as published by the Secretary of the Interior under authority of an Act of Congress. There should be furnished with each abstract a certificate showing the age and quantum of Indian blood as the same appears in this publication. If the date of the conveyance is close to the date of majority as shown by these rolls, it is preferable to secure a copy of the enrollment record from the office to the Commissioner to the Five Civilized Tribes, and perhaps supporting affidavits from other sources.

§ 342. **Death.**—A very large percentage of the conveyances of allotted Indian lands are of those inherited either directly or indirectly from an allottee. Very few administration proceedings were had upon estates of deceased members of the former Indian tribes. It is only occasionally that death is evidenced by administration proceedings.

In the absence of administration proceedings, a resort is usually had to affidavits procured from members of the immediate family or others intimate with the deceased and having personal knowledge of his death.

§ 343. **Descent.**—One of the most serious questions that counsel passing upon abstracts have to deal with is that of descent of Indian lands. It is a rare case indeed where there is an administration proceeding and an order of distribution determining heirship. The Indians themselves have not a keen appreciation of the degrees of relationship which determine the law of descent. An affidavit from an Indian as to heirship may be honestly made, but the conclusion wholly wrong. Affidavits of heirship, to be of any service, should state in minute detail the relationship to the deceas-

ed of all persons claiming the right to take by inheritance, and as well such a state of facts as to exclude the possibility of any one else taking by inheritance. In other words, an affidavit with the mere recital of a conclusion as to who takes by inheritance is of little service.

The enrollment records of the Commissioner to the Five Civilized Tribes are of material assistance in verifying the correctness of affidavits as to heirship and in detecting errors in affidavits presented.

A certified copy of the census card of any individual allottee of the Five Civilized Tribes may be obtained from the Commissioner to the Five Civilized Tribes. The information recorded by the Commissioner is usually reliable.

CHAPTER 36

ACQUISITION OF INDIVIDUAL TITLES TO INDIAN LANDS OTHERWISE THAN BY ALLOTMENT IN SEVERALTY

§ 344. Scope of this chapter.

345. Tribal lands of the Five Civilized Tribes.

346. Segregated coal lands in Choctaw and Chickasaw Nation.

347. Acquisition of individual title in lands ceded by the Indian tribes to the United States.

§ 344. Scope of this chapter.—Substantially all lands in the state of Oklahoma were at one time tribal Indian lands. About twenty-three million acres of such tribal lands have been converted into individual holdings by the allotment in severalty of the tribal domain to the members and freedmen of the various tribes. The allotment agreements made with nearly all of the Indian tribes in Oklahoma, except the Five Civilized Tribes, provided for a cession of the tribal lands in excess of those allotted to the members of the tribe to the United States. In some instances the allotment agreement prescribed the method of disposition of said lands by the United States, and in others the land so ceded became public domain of the United States.

In each of the Five Civilized Tribes there remained undisposed of, after the completion of allotments, certain unallotted tribal lands which continued to be tribal property. Provision was made for the disposition of these lands by the Secretary of the Interior.

In the Choctaw and Chickasaw Nations there was a large amount of what is known as "segregated coal and asphalt lands." The Secretary of the Interior is directed to dispose of the surface of these lands to individual purchasers.

It is the purpose in this chapter to discuss the means by which tribal lands, in excess of those allotted to members of the tribe, whether ceded to the United States or retained as tribal property, are converted into individual holdings.

§ 345. Tribal lands of the Five Civilized Tribes.—Several of the allotment agreements with the Five Civilized Tribes provided for the disposition of the unallotted tribal lands after the completion of allotments to members of the tribes. The provisions with reference to the disposition of such lands in the agreements were not uniform, and were modified from time to time.

The Act of April 26, 1906, contains the following provision: "That when allotments, as provided in this and other acts of Congress, have been made to all members and freedmen of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes, the residue of lands in each of said nations, not reserved or otherwise disposed of, shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the profits of such sales deposited in the United States treasury to the credit of the respective tribes."

Pursuant to the authority thus granted to the Secretary he has sold 49,765 acres in the Cherokee Nation, 519,975 acres in the Chickasaw Nation, 335,230 acres in the Choctaw Nation, 62,167 acres in the Creek Nation and 3,296 acres in the Seminole Nation.

There remain about 2,250,000 acres unsold in the Choctaw Nation, and a substantial acreage in the Chickasaw Nation. Under this statute tribal lands are exposed to sale at public auction to the highest bidder.

In the Choctaw and Chickasaw Nation no more than 160 acres of agricultural land and 640 acres of any other land is sold to any one person.

Twenty-five per cent. of the purchase price is required to be paid by the successful bidder on the day of sale and the balance in two installments, 25 per cent. within twelve months from date of sale and 50 per cent. within two years from date of sale; all deferred payments to bear 6 per cent. interest from date of sale. A failure to pay any unpaid installment operates as a forfeiture of the purchaser's right.

Upon the acceptance of a bid and its approval by the Secretary of the Interior the purchaser is furnished with a certificate of purchase describing the land included in his bid and setting forth the terms upon which payments are to be made and title obtained. No timber can be cut and removed, nor any drilling or mining for minerals be conducted, on the land so purchased until the purchase price in full has been paid. The purchaser is entitled to possession upon issuance of certificate of purchase, and upon full payment, to a deed. Full payment may be made at any time up to and including the time when the same is due, interest to be computed from date of sale to receipt of payment.

The lands thus acquired, when fully paid for, are subject to alienation without condition or limitation. There is no restriction upon the right of the purchaser to alienate before payment of the purchase price in full, but the vendee from such purchaser prior to the payment of the purchase price takes the same subject to all the conditions and limitations attached to nonpayment under the rules and regulations prescribed by the Secretary of the Interior.

§ 346. Segregated coal lands in Choctaw and Chickasaw Nation.—A large acreage was segregated from the tribal domain in the Choctaw-Chickasaw Nation and known as the “segregated coal and asphalt lands.”

These lands were reserved from allotment in order that the tribes might have the benefit of the value of the coal and asphalt deposits found therein. Leases were made of parts of such segregated lands for coal or asphalt purposes running for a term of years. Such segregated lands, however, were found to include large bodies of lands valuable for agricultural and grazing purposes. It was desirable to make a segregation of mineral interests and to provide for a sale of the surface of the segregated lands upon such terms as would permit the freest development of the coal and asphalt mines located thereon.

Congress, therefore, provided¹ for the sale of surface of such segregated lands. It defined the term "surface" to include "the entire estate save the coal and asphalt reserved."

The Secretary of the Interior is authorized to sell the surface of such segregated lands under such rules and regulations as he may prescribe. Under the original act and the amendment thereto, lessees of such lands for coal and asphalt purposes are permitted to acquire by purchase such additional land as they may require for the prosecution of the mining work, not exceeding in any particular case 10 per cent. of the area leased.

All surface agricultural lands are required to be sold in tracts not to exceed 160 acres, and deeds may not be issued to any one person for more than 160 acres of such agricultural land. Grazing lands are to be sold in tracts not to exceed 640 acres, and lands especially valuable by reason of proximity to towns and cities may in the discretion of the Secretary of the Interior be sold in lots or tracts containing not less than one acre each. The sale of such land is to be upon such terms as may be prescribed by the Secretary of the Interior, except that no payment shall be deferred longer than two years from date of sale, and all deferred payments shall bear interest at 5 per cent. per annum, and if default be made in any payment when due all rights of the purchaser thereunder shall, at the discretion of the Secretary of the Interior, cease, and the lands shall be taken possession of by him for the benefit of the two nations, and that part of the purchase price paid shall be forfeited for the benefit of such nations.

Upon the payment of the full purchase price the Chief Executives of the two tribes are required to execute and deliver, with the approval of the Secretary of the Interior, to each purchaser a patent or instrument of conveyance conveying to such purchaser the fee in the land with reservation to the Choctaw and Chickasaw Tribes of Indians

¹ For legislation in full, see chapter 46.

- of the coal and asphalt therein. Such patent or deed is required to contain a clause reciting the reservations, restrictions, covenants and conditions under which the property is sold, which reservations, restrictions and covenants run with the land and bind the grantee, his successors and representatives. A sale may be made upon recommendation of the mining trustees of any unleased segregated land, so as to include both the surface and coal and asphalt thereunder, and patents issued therefor as in case of the sale of the surface only, except that such patents pass full fee title to both surface and minerals.

§ 347. Acquisition of individual title in lands ceded by the Indian tribes to the United States.—The tribal lands of the several tribes ceded to the United States in the various allotment agreements have been disposed of under homestead and pre-emption statutes.

Such lands were opened to homestead entry either by statute or proclamation of the President as other lands of the United States are opened to homestead entry. Individual titles were acquired by homestead entry under the same procedure, and in the same manner, and carrying the same rights, limitations and exemptions, as homesteads acquired out of other public lands of the United States.

PART II

A COMPILATION OF ALL ALLOTMENT AGREEMENTS, ALLOTMENT ACTS AND LEGISLATION AFFECTING ALIENATION, LEASING, WILLS AND OTHER DISPOSITION, DESCENT, TAXATION, ETC., OF ALLOTTED INDIAN LANDS IN OKLAHOMA, INCLUDING THE ARKANSAS STATUTES ON CONVEYANCES, DESCENT AND DISTRIBUTION AND DOWER IN FORCE IN THE INDIAN TERRITORY PRIOR TO STATEHOOD, AND INDIAN STATUTES OF DESCENT AND DISTRIBUTION, ALL FULLY ANNOTATED.

CHAPTER 37

COMMISSION TO FIVE CIVILIZED TRIBES—MISCELLANEOUS LEGISLATION CREATING AND CONFERRING JURISDICTION UPON

§ 348. Consent of United States to allotment in severalty of the lands of the Five Civilized Tribes.

348a. Dawes Commission created.

348b. Negotiations not to affect authority of United States.

348c. Jurisdiction conferred upon Commission.

348d. Citizenship, trial, and appeal.

349. Time for completion of rolls.

350. Rolls to be filed.

351. Commission to complete tribal rolls.

352. Appeals allowed—Citizenship cases.

353. Rolls made by commission to be final—When.

354. Certain Creek children to be added to rolls.

355. Authority of Commission.

356. Applications for enrollment.

357. Closing rolls—Choctaws and Chickasaws.

358. Closing rolls—Creeks.

359. Closing rolls—Seminoles.

360. Tribal rolls to be prepared.

361. Closing Rolls.

§ 348. Consent of United States to allotment in severalty of the lands of the Five Civilized Tribes.—[15] The consent of the United States is hereby given to the allotment of lands in severalty not exceeding one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles; and upon such allotment the individuals to

whom the same may be allotted shall be deemed to be in all respects citizens of the United States. And the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated to pay for the survey of any such lands as may be allotted by any of said tribes of Indians to individual members of said tribes; and upon the allotment of the lands held by said tribes respectively the reversionary interest of the United States therein shall be relinquished and shall cease.¹

§ 348a. Dawes Commission created.—[16] The President shall nominate and, by and with the advice and consent of the Senate, shall appoint three commissioners to enter into negotiations with the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation, the Muskogee (or Creek) Nation, the Seminole Nation, for the purpose of the extinguishment of the national or tribal title to any lands within that territory now held by any and all of such nations or tribes, either by cession of the same, or some part thereof to the United States, or by the allotment and division of the same in severalty among the Indians of such nations or tribes, respectively, as may be entitled to the same, or by such other method as may be agreed upon between the several nations and tribes aforesaid, or each of them, with the United States, with a view to such an adjustment, upon the basis of justice and equity, as may, with the consent of such nations or tribes of Indians, so far as may be necessary, be requisite and suitable to enable the ultimate creation of a state or states of the Union which shall embrace the lands within the said Indian Territory. * * *

Such commissioners shall, under such regulations and directions as shall be prescribed by the President, through the Secretary of the Interior, enter upon negotiation with the several nations of Indians as aforesaid in the Indian

¹ From Act March 3, 1893, c. 209, 27 Stat. 645. See *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *In re Heff*, 197 U. S. 488, 25 Sup. Ct. 506, 49 L. Ed. 848.

Territory, and shall endeavor to procure, first, such allotment of lands in severalty to the Indians belonging to each such nation, tribe or band, respectively, as may be agreed upon as just and proper to provide for each such Indian a sufficient quantity of land for his or her needs, in such equal distribution and apportionment as may be found just and suited to the circumstances; for which purpose, after the terms of such an agreement shall have been arrived at, the said commissioners shall cause the land of any such nation or tribe, or band to be surveyed and the proper allotment to be designated; and, secondly, to procure the cession, for such price and upon such terms as shall be agreed upon, of any lands not found necessary to be so allotted or divided, to the United States; and to make proper agreements for the investment or holding by the United States of such moneys as may be paid or agreed to be paid to such nation, or tribes, or bands, or to any of the Indians thereof, for the extinguishment of their (interests) therein. But said commissioners shall, however, have power to negotiate any and all such agreements as, in view of all the circumstances affecting the subject, shall be found requisite and suitable to such an arrangement of the rights and interests and affairs of such nations, tribes, bands, or Indians or any of them, to enable the ultimate creation of a territory of the United States with a view to the admission of the same as a state in the Union.²

§ 348b. Negotiations not to affect authority of United States.—[16]. Neither the provisions of this section nor the negotiations or agreements which may be had or made thereunder shall be held in any way to waive or impair any

² From Act March 3, 1893, c. 209, 27 Stat. 645. See *Cherokee Nation v. Hitchcock*, 187 U. S. 294, 23 Sup. Ct. 115, 47 L. Ed. 183; *In re Heff*, 197 U. S. 488, 25 Sup. Ct. 506, 49 L. Ed. 848; *Wallace v. Adams*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547; *Kimberlin v. Commission to Five Civilized Tribes*, 104 Fed. 653, 44 C. C. A. 109; *Wallace v. Adams*, 143 Fed. 716, 74 C. C. A. 540; *Ligon v. Johnston*, 164 Fed. 670, 90 C. C. A. 486.

right of sovereignty which the government of the United States has over or respecting the said Indian Territory or the people thereof, or any other right of the government relating to said territory, its lands, or the people thereof.³

§ 348c. **Jurisdiction conferred upon Commission.**—That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled: Provided, however, that such application shall be made to such commissioners within three months after the passage of this act. The said Commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages and customs of each of said nations or tribes: And provided, further, that the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.⁴

§ 348d. **Citizenship, trial, and appeal.**—In the performance of such duties said Commission shall have power

³ From Act March 3, 1893, c. 209, 27 Stat. 646.

⁴ From Act June 10, 1896, c. 398, 29 Stat. 339. See *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits and other evidence in any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes: Provided, that if the tribe, or any person, be aggrieved with the decision of the tribal authorities or the Commission provided for in this act, it or he may appeal from such decision to the United States District Court: Provided, however, that the appeal shall be taken within sixty days and the judgment of the court shall be final.⁵

§ 349. **Time for completion of rolls.**—That the said Commission after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.⁶

§ 350. **Rolls to be filed.**—The Commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs, to remain there for use as the final judgment of the duly constituted authorities. And said Commission shall also make a roll of freedmen entitled to citizenship in said tribes, and shall include their names in the lists of members to be filed with the Commissioner of Indian Affairs. And said Commis-

⁵ From Act June 10, 1896, c. 398, 29 Stat. 339.

⁶ From Act June 10, 1896, c. 398, 29 Stat. 339.

sion is further authorized and directed to make a full report to Congress of leases, tribal and individual, with the area, amount, and value of the property leased and the amount received therefor, and by whom and from whom said property is leased, and is further directed to make a full and detailed report as to the excessive holdings of the members of said tribes and others.⁷

§ 351. **Commission to complete tribal rolls.**—That said Commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any one of said tribes, when ratified, shall operate to suspend any provisions of this act if in conflict therewith as to said nation: Provided, that the words “rolls of citizenship,” as used in the act of June tenth, eighteen hundred and ninety-six making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added, either by the council of such nations, the duly authorized courts thereof, or the Commission under the act of June tenth, eighteen hundred and ninety-six. And all other names appearing upon such rolls shall be open to investigation by such Commission for a period of six months after the passage of this act. And any name appearing on such rolls and not confirmed by the act of June tenth, eighteen hundred and ninety-six, as herein construed, may be stricken therefrom by such Commission where the party affected, shall have ten days’ previous notice that said Commission will investigate and determine the right of such party to remain upon such roll as a citizen of such nation:

⁷ From Act June 10, 1896, c. 398, 29 Stat. 340.

Provided, also, that any one whose name shall be stricken from the roll by such Commission shall have the right of appeal, as provided in the act of June tenth, eighteen hundred and ninety-six.⁸

§ 352. **Appeals allowed — Citizenship cases.**—Appeals shall be allowed from the United States courts in the Indian Territory direct to the Supreme Court of the United States to either party, in all citizenship cases, and in all cases between either of the Five Civilized Tribes and the United States involving the constitutionality or validity of any legislation affecting citizenship, or the allotment of lands in the Indian Territory, under the rules and regulations governing appeals to said court in other cases: Provided, that appeals in cases decided prior to this act must be perfected in one hundred and twenty days from its passage; and in cases decided subsequent thereto, within sixty days from final judgment; but in no such case shall the work of the Commission to the Five Civilized Tribes be enjoined or suspended by any proceeding in or order of any court, or of any judge, until after final judgment in the Supreme Court of the United States. In case of appeals, as aforesaid, it shall be the duty of the Supreme Court to advance such cases on the docket and dispose of the same as early as possible.⁹

§ 353. **Rolls made by Commission to be final—When.**—The rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent; and the Secretary of the Interior is authorized and directed to fix a time by agreement with said tribes or either of them for closing said rolls, but upon failure or refusal of said tribes or any of them to agree thereto, then

⁸ From Act June 7, 1897, c. 3, 30 Stat. 84.

⁹ From Act July 1, 1898, c. 545, 30 Stat. 591.

the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto.¹⁰

§ 354. **Certain Creek children to be added to rolls.**—Provided, that said Commission shall exercise all the powers heretofore conferred upon it by Congress: Provided further, that all children born to duly enrolled and recognized citizens of the Creek Nation up to and including the twenty-fifth day of May, nineteen hundred and one, and then living, shall be added to the rolls of citizenship of said nation made under the provisions of an act entitled "An act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes," approved March first, nineteen hundred and one, and if any such child has died since the twenty-fifth day of May, nineteen hundred and one, or may hereafter die, before receiving his allotment of land and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs and be allotted and distributed to them accordingly.¹¹ * * *

§ 355. **Authority of Commission.**—Provided, that said Commission shall exercise all the powers heretofore conferred upon it by Congress; and provided further, that the Secretary of the Interior is hereby granted authority to sell at public sale in tracts not exceeding one hundred and sixty acres to any one purchaser, under rules and regulations to be made by the Secretary of the Interior, the residue of land in the Creek Nation belonging to the Creek Tribe of Indians, consisting of about five hundred thousand acres, and being the residue of lands left over after allotments of one hundred and sixty acres to each of said tribe.¹²

§ 356. **Applications for enrollment.**—That the Commission to the Five Civilized Tribes is hereby authorized for

¹⁰ From Act March 3, 1901, c. 832, 31 Stat. 1077.

¹¹ From Act May 27, 1902, c. 888, 32 Stat. 258.

¹² From Act April 21, 1904, c. 1402, 33 Stat. 204.

sixty days after the date of the approval of this act to receive and consider applications for enrollment of infant children born prior to September twenty-fifth, nineteen hundred and two, and who were living on said date, to citizens by blood of the Choctaw and Chickasaw tribes of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children.¹³

§ 357. **Closing rolls—Choctaws and Chickasaws.**—That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollments of children born subsequent to September twenty-fifth, nineteen hundred and two, and prior to March fourth, nineteen hundred and five, and who were living on said latter date, to citizens by blood of the Choctaw and Chickasaw tribes of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children.¹⁴

§ 358. **Closing rolls—Creeks.**—That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollments of children born subsequent to May twenty-fifth, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children.¹⁵

§ 359. **Closing rolls—Seminoles.**—That the Commission to the Five Civilized Tribes is authorized for ninety days after date of the approval of this act to receive and consider

¹³ From Act March 3, 1905, c. 1479, 33 Stat. 1071.

¹⁴ From Act March 3, 1905, c. 1479, 33 Stat. 1071.

¹⁵ From Act March 3, 1905, c. 1479, 33 Stat. 1071.

applications for enrollment of infant children born prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Seminole Tribe whose enrollment has been approved by the Secretary of the Interior; and to enroll and make allotments to such children giving to each an equal number of acres of land, and such children shall also share equally with other citizens of the Seminole Tribe in the distribution of all other tribal property and funds.¹⁶

§ 360. **Tribal rolls to be prepared.**—That the Secretary of the Interior shall upon completion of the approved rolls, have prepared and printed in a permanent record book such rolls of the Five Civilized Tribes and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection. That any person who shall copy any roll of citizenship of the Creek, Cherokee, Choctaw, Chickasaw or Seminole Tribes of Indians, prepared by or under the direction of the Secretary of the Interior, the Commission to the Five Civilized Tribes or the Commissioner to the Five Civilized Tribes, whether completed or not, or any person who shall, directly or indirectly, exhibit, sell, offer to sell, give away, offer to give away, or in any manner or by any means offer to dispose of, or who shall have in his possession, any such roll or rolls, any copy of the same, or a copy of any portion thereof, shall be deemed guilty of a misdemeanor, and be punished by imprisonment for not exceeding two years: Provided, that this act shall not apply to any persons authorized by the Secretary of the Interior, the Commissioner of Indian Affairs, or the Commissioner to the Five Civilized Tribes to copy, exhibit, or use such rolls, or a copy thereof, for any purpose necessary or required by law.¹⁷

§ 361. **Closing rolls.**—That section two of the act entitled "An act to provide for the final disposition of the

¹⁶ From Act March 3, 1905, c. 1479, 33 Stat. 1071.

¹⁷ From Act June 21, 1906, c. 3504, 34 Stat. 340.

affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, be, and the same is hereby amended by striking out thereof the words: "Provided further, that nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing applications has been fixed by agreement between said tribe and the United States: Provided further, that nothing herein shall apply to the intermarried whites in the Cherokee Nations whose cases are now pending in the Supreme Court of the United States." And insert in said act in lieu of the matter repealed, the following: "Provided further, that nothing herein shall be construed so as hereafter to permit any person to file an application for enrollment or to be entitled to enrollment in any of said tribes, except for minors, the children of Indians by blood, or of freedmen members of the said tribes, or for Mississippi Choctaws identified under the fourteenth article of the treaty of eighteen hundred and thirty, as herein otherwise provided, and the fact that the name of a person appears on the tribal roll of any of said tribes shall not be construed to be an application for enrollment."¹⁸

¹⁸ From Act June 21, 1906, c. 3504, 34 Stat. 341, 342.

CHAPTER 38

ALIENATION, DESCENT AND JURISDICTION—MISCELLANEOUS LEGISLATION AFFECTING

- § 362. Complete jurisdiction conferred upon United States courts.
- 363. Restrictions on alienation removed for townsite purposes.
- 364. Alienation—Removal of restrictions.
- 365. Arkansas Law extended to persons and estates of Indians and freedmen.
- 366. Removal of restrictions for townsite purposes.

§ 362. Complete jurisdiction conferred upon United States courts.—That on and after January first, eighteen hundred and ninety-eight, the United States courts in said territory shall have original and exclusive jurisdiction and authority to try and determine all civil causes in law and equity thereafter instituted and all criminal causes for the punishment of any offense committed after January first, eighteen hundred and ninety-eight, by any person in said Territory, and the United States commissioners in said territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said territory; and the laws of the United States and the state of Arkansas in force in the territory shall apply to all persons therein, irrespective of race, said courts exercising jurisdiction thereof as now conferred upon them in the trial of like causes; and any citizen of any one of said tribes otherwise qualified who can speak and understand the English language may serve as a juror in any of said courts.¹

§ 363. Restrictions upon alienation removed for townsite purposes.—And provided further, that nothing herein contained shall prevent the survey and platting, at their

¹ From Act June 7, 1897, c. 3, 30 Stat. 83. See *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547; *Armstrong v. Wood* (C. C.) 195 Fed. 137; *Hayes v. Barringer*, 7 Ind. T. 697, 104 S. W. 937; *Id.*, 168 Fed. 221, 93 C. C. A. 507.

own expense, of townsites by private parties where stations are located along the lines of railroads, nor the unrestricted alienation of lands for such purposes, when recommended by the Commission to the Five Civilized Tribes and approved by the Secretary of the Interior. That hereafter the Secretary of the Interior may, whenever the chief executive of the Choctaw or Chickasaw nations fails or refuses to appoint a townsite commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the townsite commissioner appointed by the chief executive of the Choctaw or Chickasaw nations to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created.²

§ 364. **Alienation—Removal of restrictions.**—And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian agent at the Union Agency in charge of the Five Civilized Tribes, if said agent is satisfied upon a full investigation of each individual case that such removal of restrictions is for the best interests of said allottee. The finding of the United States Indian agent and the approval of the Secretary of the Interior shall be in writing and shall be recorded in the same manner as patents for lands are recorded.³

² From Act March 3, 1903, c. 994, 32 Stat. 996.

³ From Act April 21, 1904, c. 1402, 33 Stat. 204. See *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792; *Landrum v. Graham*, 22 Okl. 458, 98 Pac. 432; *Eldrid v. Okmulgee Loan & Trust Co.*, 22 Okl. 742, 98 Pac. 929; *Sharp v. Lancaster*, 23 Okl. 349, 100 Pac. 578; *Blakemore v. Johnson*, 24 Okl. 544, 103 Pac. 554; *Simmons v. Whittington*, 27 Okl. 356, 112 Pac. 1018; *Harris v. Lynde-Bowman-Darby Co.*, 29 Okl. 362, 116 Pac. 808; *Williams v.*

§ 365. **Arkansas law extended to persons and estates of Indians and freedmen.**—[2]. All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said territory, whether Indian, freedmen, or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlements of all estates of decedents, the guardianships of minors and incompetents, whether Indians, freedmen, or otherwise.⁴

§ 366. **Removal of restrictions for townsite purposes.**—That for the purpose of allowing any Indian allottee to sell for townsite purposes any portion of the lands allotted to him the Secretary of the Interior may, by order, remove restrictions upon the alienation of such lands and issue fee-simple patents therefor under such rules and regulations as he may prescribe.

That upon the recommendation of the Commissioner to the Five Civilized Tribes and with the approval of the Secretary of the Interior any allottee in the Indian Territory may be permitted to survey and plat at his own expense for townsite purposes his allotment when the same is located along the line of any railroad where stations are located.⁵

Johnson, 32 Okl. 247, 122 Pac. 485; Rogers v. Noel, 34 Okl. 238, 124 Pac. 976; Rentle v. McCoy, 35 Okl. 77, 128 Pac. 244; Parkinson v. Skelton, 33 Okl. 813, 128 Pac. 131; Lynch v. Franklin (Okl.) 130 Pac. 599; Goat v. United States, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; Denning Inv. Co. v. United States, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; United States v. Jacobs, 195 Fed. 707, 115 C. C. A. 507; Hawkins v. Oklahoma Oil Co. (C. C.) 195 Fed. 345; United States v. Dowden (C. C.) 194 Fed. 475, reversed in Mullen v. United States, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834, so far as it relates to lands allotted under section 22 of the Choctaw-Chickasaw Supplemental Agreement; Frame v. Bivens (C. C.) 189 Fed. 785; United States v. Shock (C. C.) 187 Fed. 862.

⁴ From Act April 28, 1904, c. 1824, 33 Stat. 573. See *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547; *Armstrong v. Wood* (C. C.) 195 Fed. 137; *Hayes v. Barringer*, 7 Ind. T. 697, 104 S. W. 937; *Id.*, 168 Fed. 221, 93 C. C. A. 507.

⁵ From Act June 21, 1906, c. 3504, 34 Stat. 373.

CHAPTER 39

RESERVATION OF MINERAL LANDS AND DISPOSITION OF UNALLOTTED LANDS

- § 367. Sale of coal and asphalt lands.
- 368. Choctaw and Chickasaw unallotted lands.
- 369. Certain lands reserved from allotment.
- 370. Authorizing disposition of lands reserved.
- 371. Sale of unallotted Creek lands.
- 372. Reservations from allotment for church and cemetery purposes—Choctaw and Chickasaw Nations.
- 373. Reservations from allotment—Choctaw and Chickasaw Nations.

§ 367. Sale of coal and asphalt lands.—That the Secretary of the Interior be, and he is hereby, authorized and directed, upon the sale of lands in Indian Territory covered by coal and asphalt leases, to sell such lands subject to the right of the lessee to use so much of the surface as may be needed for coke ovens, miners' houses, store and supply buildings, and such other structures as are generally used in the production and shipment of coal and coke. Lessees may use the tipples and underground workings located on any lease in the production of coal and coke from adjoining leases, and are hereby authorized to surrender leased premises to the owner thereof on giving sixty days' notice in writing to such owner and paying all charges and royalties due to the date of surrender: Provided, however, that nothing herein contained shall release the lessee from the payment of the stipulated royalty so long as such lessee remains in possession of any of the surface of the lands included in his lease for any purpose whatever: And provided, that any lessee may remove or dispose of any machinery, tools, or equipment the lessee may have upon the leased lands.¹

§ 368. Choctaw and Chickasaw unallotted lands.—All unleased lands which are by section fifty-nine of an act en-

¹ From Act April 21, 1904, c. 1402, 33 Stat. 208.

titled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians, and for other purposes," approved July first, nineteen hundred and two, directed to "be sold at public auction for cash," and all other unleased lands and deposits of like character in said nations segregated under any act of Congress, shall, instead, be sold under direction of the Secretary of the Interior in tracts not exceeding nine hundred and sixty acres to each person, after due advertisement, upon sealed proposals, under regulations to be prescribed by the Secretary of the Interior and approved by the President, with authority to reject any or all proposals: Provided, that the President shall appoint a commission of three persons, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, which commission shall have a right to be present at the time of the opening of bids and be heard in relation to the acceptance or rejection thereof ²

§ 369. **Certain lands reserved from allotment.**—[1]. That the Secretary of the Interior is hereby authorized and empowered to segregate and reserve from allotment, and to cancel any filings or applications that may heretofore have been made with a view to allotting the following described lands, situate in the Choctaw Nation, to-wit: The north half of the south half of the southeast quarter, and the northeast quarter of the southeast quarter of the southwest quarter of section nine; the north half of the south half of the south half of section ten; the north half of the south half of the south half of section eleven, and the north half of the south half of the southwest quarter of section twelve, all in township five north, range nineteen east, containing two hundred and fifty acres, more or less; and the northwest quarter of the southwest quarter of section eight,

² From Act April 21, 1904, c. 1402, 33 Stat. 209.

township five north, range nineteen east, and the southwest quarter of the northeast quarter of section seven, township five north, range nineteen east, containing, eighty acres, more or less.³

§ 370. **Authorizing disposition of lands reserved.**—[2]. That the provisions of sections fifty-six to sixty-three inclusive, of the act of Congress approved July first, nineteen hundred and two, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes, and for other purposes," be, and the same are hereby, made applicable to the lands above described, the same as if the said described lands had been made a part of the segregation, as contemplated by said sections fifty-six to sixty-three, inclusive, of said above act approved July first, nineteen hundred and two: Provided, that the Secretary of the Interior may, in his discretion, add said lands to and make them a part of the coal and asphalt mining leases now in effect, and to which said lands above described are contiguous, the lands in each case to be added to and made a part of the lease to which they are adjacent and which they join, government subdivisions being followed as nearly as possible: Provided further, that the holder or holders of the lease or leases to which such lands shall be added, shall, before the same are added, pay the Indian or Indians who have filed upon or applied for such lands as their allotments, or who are in possession thereof, the value of the improvements placed on the land, by said Indian or Indians, such value to be determined under the direction of the Secretary of the Interior: And provided further, that said lands shall be sold as other leased coal and asphalt lands in the Choctaw and Chickasaw Nations in the Indian Territory are sold.⁴

§ 371. **Sale of unallotted Creek lands.**—That the provision in the Indian appropriation bill for the fiscal year end-

³ From Act April 28, 1904, c. 1794, 33 Stat. 544.

⁴ From Act April 28, 1904, c. 1794, 33 Stat. 544.

ing June thirtieth, nineteen hundred and four, authorizing the Secretary of the Interior to sell the residue of the lands of the Creek Nation not taken as allotments is hereby repealed and the provision of the Creek agreement, article III, approved March one, nineteen hundred and one, is hereby restored and re-enacted.

That the Secretary of the Interior shall make an investigation and definitely ascertain what amount of land, if any, belonging to the Creek Nation, has been taken and allotted to the members of the Seminole Tribe and arrange payment to the Creek Nation for such land if there be anything due by the Seminole Nation.

That the improvements of Seminole citizens upon Creek lands and the improvements of Creek citizens upon Seminole lands that are unpaid for by said allottees shall be investigated by the Secretary of the Interior and paid for by said nations, respectively.⁵

§ 372. Reservations from allotment for churches and cemetery purposes—Choctaw and Chickasaw Nations.—That there shall be reserved from allotment one acre of the unallotted lands of the Choctaw and Chickasaw tribes for each church under the control of or used exclusively by the Choctaw or Chickasaw freedmen; and there shall be reserved from allotment one acre of said lands for each school conducted by Choctaw or Chickasaw freedmen, under the supervision of the authorities of said tribes and officials of the United States, and patents shall issue, as provided by law, to the person or organization entitled to receive the same. There are also reserved such tracts from said lands as the Secretary of the Interior may approve for cemeteries; and such cemeteries may be reserved, respectively, for Indians, freedmen, and whites, as the Secretary may designate.⁶

⁵ From Act March 3, 1905, c. 1479, 33 Stat. 1072.

⁶ From Act June 21, 1906, c. 3504, 34 Stat. 338.

§ 373. Reservations from allotment — Choctaw and Chickasaw Nations.—That the Secretary of the Interior is hereby authorized and empowered to segregate and reserve from allotment and to cancel any filings or applications that may heretofore have been made with a view to allotting the following-described lands, situate in the Choctaw Nation, Indian Territory, to-wit: The northwest quarter of section twelve, in township five north, range fifteen east, containing in the aggregate one hundred and sixty acres more or less. That the provisions of sections fifty-six to sixty-three, inclusive, of the Act of Congress approved July first, nineteen hundred and two, entitled, "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes, and for other purposes," be, and the same are hereby, made applicable to the lands above described, the same as if the said described lands had been made a part of the segregation as contemplated by said sections fifty-six to sixty-three, inclusive, of said above act approved July first, nineteen hundred and two: Provided, that the Secretary of the Interior may, in his discretion, add to and make a part of the coal mining leases now in effect, and to which said lands are contiguous, the northwest quarter of section twelve, in township five north, of range fifteen east, government subdivisions being followed as nearly as possible: Provided, further, that the holder or holders of the lease or leases to which such lands shall be added, shall before the same are added, pay the Indian or Indians who have filed upon or applied for such lands as their allotments, or who are in possession thereof, the value of the improvements placed on the land by said Indian or Indians, such value to be determined under the direction of the Secretary of the Interior.⁷

⁷ From Act June 21, 1906, c. 3504, 34 Stat. 338.

CHAPTER 40

TOWNSITES—MISCELLANEOUS LEGISLATION APPLICABLE TO

- § 374. Provision for laying out townsites.
- 375. Laying out of townsites authorized.
- 376. Corporate and townsite limits may differ.
- 377. Commission may segregate lands for townsites.
- 378. Appraisement and sale authorized.
- 379. Towns where population less than two hundred.
- 380. Townsite commission is abolished and duties devolved upon Secretary.
- 381. Commission's work transferred to Secretary.

§ 374. Provision for laying out townsites.—Provided, that the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and parks, the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee Nations, as may at that time have a population of two hundred or more, in such manner as will best subserve the then present needs and the reasonable prospective growth of such towns.

The work of surveying, laying out, and platting such townsites shall be done by competent surveyors, who shall prepare five copies of the plat of each townsite, which, when the survey is approved by the Secretary of the Interior, shall be filed as follows: One in the office of the Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the Commission to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the best interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of townsites in any of said nations by contract.

Hereafter the work of the respective townsite commissions provided for in the agreement with the Choctaw and

Chickasaw tribes ratified in section twenty-nine of the Act of June twenty-eight, eighteen hundred and ninety-eight, entitled, "An act for the protection of the people of the Indian Territory, and for other purposes," shall begin as to any townsite immediately upon the approval of the survey by the Secretary of the Interior and not before.

The Secretary of the Interior may in his discretion appoint a townsite commission consisting of three members for each of the Creek and Cherokee Nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots in the nation for which it is appointed, acting in conformity with the provisions of any then existing act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior, and if no two members are able to agree the matter shall be determined by such Secretary.

Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee Nation a separate townsite commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that nation. Every such local commission shall be appointed in the manner provided in the act approved June twenty-eight, eighteen hundred and ninety-eight entitled "An act for the protection of the people of the Indian Territory."¹

§ 375. Laying out of townsites authorized.—The Secretary of the Interior, where in his judgment the public in-

¹ From Act May 31, 1900, c. 598, 31 Stat. 237.

terest will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances.²

§ 376. Corporate and townsite limits may differ.—It shall not be required that the townsite limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive, but such townsite limits and corporate limits shall be so established as to best subserve the then present needs and the reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established: Provided further, that the exterior limits of all townsites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.³

§ 377. Commission may segregate lands for townsites.—Upon the recommendation of the Commission to the Five Civilized Tribes the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, or Cherokee Nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of the lands therein, and this irrespective of the population of such townsite at the time. Such townsites shall be surveyed, laid out, and platted, and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other townsites: Provided further, that whenever any tract of land shall be set aside as herein provided which is occupied by a member of the tribe,

² From Act May 31, 1900, c. 598, 31 Stat. 238.

³ From Act May 31, 1900, c. 598, 31 Stat. 238.

such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior.

Nothing herein contained shall have the effect of avoiding any work heretofore done in pursuance of the said Act of June twenty-eight, eighteen hundred and ninety-eight, in the way of surveying, laying out, or platting of townsites, appraising or disposing of town lots in any of said nations, but the same, if not heretofore carried to a state of completion, may be completed according to the provisions hereof.⁴

§ 378. **Appraisement and sale authorized.**—As soon as the plat of any townsite is approved the proper commission shall, with all reasonable dispatch and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior, shall, under the supervision of such Secretary, proceed to the disposition and sale of the lots in conformity with any then existing act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior, they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

The Secretary of the Interior may, for good cause remove any member of any townsite commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy otherwise occurring in like manner as the place was originally filled.⁵

§ 379. **Towns where population less than two hundred.**—Provided, that hereafter the Secretary of the Interi-

⁴ From Act May 31, 1900, c. 598, 31 Stat. 238.

⁵ From Act May 31, 1900, c. 598, 31 Stat. 238.

or may, whenever the chief executive of the Choctaw or Chickasaw Nations fails or refuses to appoint a townsite commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the townsite commissioner, appointed by the chief executive of the Choctaw or Chickasaw Nations to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created: Provided further, that the limits of such towns in the Cherokee, Choctaw, and Chickasaw Nations having a population of less than two hundred people, as in the judgment of the Secretary of the Interior should be established, shall be defined as early as practicable by the Secretary of the Interior in the same manner as provided for towns having over two hundred people under existing law, and the same shall not be subject to allotment. That the land so segregated and reserved from allotment shall be disposed of, in such manner as the Secretary of the Interior may direct, by a townsite commission, one member to be appointed by the Secretary of the Interior and one by the executive of the nation in which such land is located; proceeds arising from the disposition of such lands to be applied in like manner as the proceeds of other lands in townsites.⁶

§ 380. Townsite commission is abolished and duties devolved upon Secretary.—Provided, that the several townsite commissions in the Choctaw, Chickasaw, Creek, and Cherokee Nations shall, upon the completion of the appraisement of the town lots in their respective nations, be abolished by the Secretary of the Interior at such time as in his judgment it is considered proper; and all unfinished work of such commissions, the sale of town lots at public auctions, disposition of contests, the determination of the rights of the claimants, and the closing up of all other minor matters appertaining thereto shall be performed by the Secretary of the Interior under such rules and regulations

⁶ From Act May 27, 1902, c. 888, 32 Stat. 259.

as he may prescribe: Provided further, that all unsold lots, the disposition of which is required by public auction, shall be offered for sale and disposed of from time to time by the Secretary of the Interior for the best obtainable price as will in his judgment best subserve the interests of the several tribes; and the various provisions of law in conflict herewith are modified accordingly.⁷

§ 381. Commission's work transferred to Secretary.— Provided, that the work of completing the unfinished business, if any, of the Commission to the Five Civilized Tribes shall devolve upon the Secretary of the Interior, and that all the powers heretofore granted to the said Commission to the Five Civilized Tribes are hereby conferred upon the said Secretary on and after the first of July, nineteen hundred and five.⁸

⁷ From Act March 3, 1905, c. 1479, 33 Stat. 1059.

⁸ From Act March 3, 1905, c. 1479, 33 Stat. 1060.

CHAPTER 41

MISCELLANEOUS LEGISLATION APPLICABLE TO FIVE CIVILIZED TRIBES

- § 382. Government of Indian Territory.
- 383. Approval of acts of Indian councils required.
- 384. Acts of Cherokee or Creek Councils not binding until approved.
- 385. Timber and stone—Right to sell recognized.
- 386. Illegal cutting of timber prohibited.
- 387. Delaware—Cherokee controversy.
- 388. Court of Claims to determine rights of intermarried whites.
- 389. Providing for additional judges.
- 390. Investigation of leases of allotted lands authorized.
- 391. Delaware—Cherokee controversy.
- 392. Joint resolution extending tribal government.
- 392a. Sale of land for schoolhouse locations authorized—Act May 29, 1908.

§ 382. Government of Indian Territory.—It is hereby declared to be the duty of the United States to establish a government in the Indian Territory which will rectify the many inequalities and discriminations now existing in said territory, and afford needful protection to the lives and property of all citizens and residents thereof.¹

§ 383. Approval acts of Indian councils required.—That on and after January first, eighteen hundred and ninety-eight, all acts, ordinances, and resolutions of the council of either of the aforesaid Five Tribes passed shall be certified immediately upon their passage to the President of the United States and shall not take effect if disapproved by him or until thirty days after their passage: Provided, that this act shall not apply to resolutions for adjournment, or any acts, or resolutions, or ordinances in relation to negotiations with commissioners heretofore appointed to treat with said tribes.²

¹ From Act June 10, 1896, c. 398, 29 Stat. 340.

² From Act June 7, 1897, c. 3, 30 Stat. 84.

§ 384. **Acts of Cherokee or Creek Councils not binding until approved.**—That no act, ordinance, or resolution of the Creek or Cherokee tribes, except resolutions for adjournment, shall be of any validity until approved by the President of the United States. When such acts, ordinances or resolutions, passed by the council of either of said tribes shall be approved by the principal chief thereof, then it shall be the duty of the national secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances, or resolutions, when so approved, shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby, and when disapproved shall be returned to the tribe enacting the same.^a

§ 385. **Timber and stone—Right to sell recognized.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the act entitled “An act to provide for the use of timber and stone for domestic and industrial purposes in the Indian Territory,” approved June sixth, nineteen hundred, be amended so as to read as follows:

“That the Secretary of the Interior is authorized to prescribe rules and regulations for the procurement of timber and stone for domestic and industrial purposes, including the construction, maintenance, and repairs of railroads and other highways, to be used only in the Indian Territory, or upon any railroad outside of the said territory which is part of any continuous line of railroad extending into the said territory, from lands belonging to either of the Five Civilized Tribes, and to fix the full value thereof to be paid therefor, and collect the same for the benefit of said tribes; Provided, however, that nothing herein contained shall be construed to prevent allottees from disposing of timber and stone on their allotments, as provided in section sixteen of

^a From Act March 3, 1901, c. 832, 31 Stat. 1077.

an act entitled 'An act for the protection of the people of the Indian Territory, and for other purposes,' approved June twenty-eighth, eighteen hundred and ninety-eight, from and after the allotment by the Commission to the Five Civilized Tribes."⁴

§ 386. **Illegal cutting of timber prohibited.**—[2]. That every person who unlawfully cuts, or aids, or is employed in unlawful cutting, or wantonly destroys, or procures to be wantonly destroyed, any timber standing upon the lands of either of said tribes contrary to the provisions of this act and the regulations prescribed thereunder by the Secretary of the Interior, shall pay a fine of not more than five hundred dollars, or be imprisoned not more than twelve months, or both, in the discretion of the court trying the same."⁵

§ 387. **Delaware-Cherokee controversy.**—That the Delaware-Cherokee citizens who have made improvements, or are in rightful possession of such improvements, in the Cherokee Nation at the time of the passage of this act shall have the right to first select from said improved lands their allotments, and thereafter, for a period of six months, shall have the right to sell the improvements upon their surplus holdings of lands to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the President for that purpose; and the vendor shall have a lien upon the rents and profits of the land on which the improvements are located for the purchase money remaining unpaid; and the vendor shall have the right to enforce such lien in any court of competent jurisdiction. The vendor, may, however, elect to take and retain the possession of the land at a fair cash rental, to be approved by the official so as aforesaid designated, until such rental shall be sufficient to satisfy the unpaid purchase price, and when the purchase price

⁴ From Act Jan. 21, 1903, c. 195, 32 Stat. 774.

⁵ From Act Jan. 21, 1903, c. 195, 32 Stat. 774.

is fully paid he shall forthwith deliver possession of the land to the purchaser: Provided, however, that any crops then growing on the land shall be and remain the property of the vendor, and he may have access to the land so long as may be necessary to cultivate and gather such growing crops. Any such purchaser shall, without unreasonable delay, apply to select as an allotment the land upon which the improvements purchased by him are located, and shall submit with his application satisfactory proof that he has in good faith purchased such improvements.⁶

§ 388. **Court of Claims to determine rights of intermarried whites.**—That the act entitled, “An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes,” approved October first, eighteen hundred and ninety, be, and the same is hereby, amended so as to confer upon the Court of Claims the same jurisdiction to determine the claims and rights of those alleged citizens of the Cherokee Nation known as intermarried whites, as is therein conferred upon said court relative to the rights and claims of the Shawnee and Delaware Indians and the freedmen of said Cherokee Nation, and said case shall be advanced on the calendar of said Court of Claims and the calendar of the Supreme Court, if the same is appealed.⁷

§ 389. **Providing for additional judges.**—[1]. That there shall be appointed by the President, by and with the advice and consent of the Senate, four additional judges of the United States court in the Indian Territory, one for the Northern district, one for the Western district, one for the Central district, and one for the Southern district. And said judges shall have all the authority and exercise all the powers, perform like duties, and receive the same salary as other judges of said court, and shall each serve for a

⁶ From Act April 21, 1904, c. 1402, 33 Stat. 205.

⁷ From Act April 21, 1904, c. 1402, 33 Stat. 208.

term of four years from date of appointment, unless said offices are sooner abolished by law. Neither the additional judges, nor their successors in office, shall be members of the court of appeals for the Indian Territory, but they shall hold such courts in their respective districts, as may be directed by the court of appeals of the Indian Territory, or majority of the judges thereof in vacation: Provided, that none of said judges shall have power to appoint clerks of courts, United States commissioners, or United States constables in said districts, and hereafter at least three terms of court shall be held in each year, at each place of holding court in the Indian Territory, the times to be fixed in the manner now provided by law.⁸

§ 390. **Investigation of leases of allotted lands authorized.**—It shall be the duty of the Secretary of the Interior to investigate, or cause to be investigated, any lease of allotted land in the Indian Territory which he has reason to believe has been obtained by fraud, or in violation of the terms of existing agreements with any of the Five Civilized Tribes, and he shall in any such case where in his opinion the evidence warrants it refer the matter to the Attorney General for suit in the proper United States court to cancel the same, and in all cases where it may appear to the court that any lease was obtained by fraud, or in violation of such agreements, judgment shall be rendered canceling the same upon such terms and conditions as equity may prescribe, and it shall be allowable in cases where all parties in interest consent thereto to modify any lease and to continue the same as modified: Provided, no lease made by any administrator, executor, guardian, or curator which has been investigated by and has received the approval of the United States court having jurisdiction of the proceeding shall be subject to suit or proceeding by the Secretary of the Interior or Attorney General: Provided further, no lease made by any administrator, executor, guardian, or cu-

⁸ From Act April 28, 1904, c. 1824, 33 Stat. 573.

rator shall be valid or enforceable without the approval of the court having jurisdiction of the proceeding.⁹

§ 391. **Delaware-Cherokee controversy.**—That Delaware-Cherokee citizens who have made improvements, or were in rightful possession of such improvements upon lands in the Cherokee Nation on April twenty-first, nineteen hundred and four to which there is no valid adverse claim, shall have the right within six months from the date of the approval of this act to dispose of such improvements to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the President for that purpose and the amount for which said improvements are disposed of, if sold according to the provisions of this Act, shall be a lien upon the rents and profits of the land until paid, and such lien may be enforced by the vendor in any court of competent jurisdiction: Provided, that the right of any Delaware-Cherokee citizen to dispose of such improvements shall, before the valuation at which the improvements may be sold, be determined under such regulations as the Secretary of the Interior may prescribe.¹⁰

§ 392. **Joint resolution extending tribal governments.**—Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes or Nations of Indians in the Indian Territory are hereby continued in full force and effect for all purposes under existing laws until all property of such tribes, or the proceeds thereof, shall be distributed among the individual members of said tribes unless hereafter otherwise provided by law.¹¹

⁹ From Act March 3, 1905, c. 1479, 33 Stat. 1060.

¹⁰ From Act March 3, 1905, c. 1479, 33 Stat. 1071.

¹¹ From Act March 2, 1906, 34 Stat. 822.

§ 392a. Sale of land for schoolhouse locations authorized—Act May 29, 1908.—[10]. That the Secretary of the Interior is hereby authorized to sell for use for school purposes to school districts of the state of Oklahoma, from the unallotted lands of the Five Civilized Tribes, tracts of land not to exceed two acres in any one district, at prices and under regulations to be prescribed by him, and proper conveyances of such lands shall be executed in accordance with existing laws regarding the conveyance of tribal property; and the Secretary of the Interior also shall have authority to remove the restrictions on the sale of such lands, not to exceed two acres in each case, as allottees of the Five Civilized Tribes, including full-bloods and minors, may desire to sell for school purposes.¹²

¹² 35 Stat. 447, c. 216.

CHAPTER 42

ACT JUNE 28, 1898, ENTITLED "AN ACT FOR THE PROTECTION OF THE PEOPLE OF THE INDIAN TERRITORY AND FOR OTHER PURPOSES," NOT INCLUDING THE ATOKA AGREEMENT

(CHAPTER 517, 30 STAT. 495)

- § 393. Certain crimes to be punished.
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- 416. Directing payment of moneys.
- 417. Appropriation.
- 418. Laws of tribes not to be enforced.
- 419. Indian inspector located in Indian Territory.
- 420. Tribal courts abolished.

§ 393. Certain crimes to be punished.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that in all criminal prosecutions in the Indian Territory against officials for embezzlement, bribery, and embracery the word "officer," when the same appears in the criminal laws heretofore extended over and put in force in said territory, shall include

all officers of the several tribes or nations of Indians in said territory.¹

§ 394. Authorizing making nations parties to suits.—
[2]. That when in the progress of any civil suit, either in law or equity, pending in the United States court in any district in said territory, it shall appear to the court that the property of any tribe is in any way affected by the issues being heard, said court is hereby authorized and required to make said tribe a party to said suit by service upon the chief or governor of the tribe, and the suit shall thereafter be conducted and determined as if said tribe had been an original party to said action.²

§ 395. Jurisdiction where tribal membership denied.—
[3]. That said courts are hereby given jurisdiction in their respective districts to try cases against those who may claim to hold as members of a tribe and whose membership is denied by the tribe, but who continue to hold said lands and tenements notwithstanding the objection of the tribe; and if it be found upon trial that the same are held unlawfully against the tribe by those claiming to be members thereof, and the membership and right are disallowed by the Commission to the Five Tribes, or the United States court, and the judgment has become final, then said court shall cause the parties charged with unlawfully holding said possessions to be removed from the same and cause the lands and tenements to be restored to the person or persons or nation or tribe of Indians entitled to the possession of the same: Provided always, that any person being

¹ *Hendrix v. United States*, 219 U. S. 79, 31 Sup. Ct. 193, 55 L. Ed. 102.

² *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Adams v. Murphy*, 165 Fed. 304, 91 C. C. A. 272; *Porter v. Murphy*, 7 Ind. T. 395, 104 S. W. 658; *Thebo v. Choctaw Tribe of Indians*, 66 Fed. 372, 13 C. C. A. 519; *Wallace v. Adams*, 143 Fed. 716, 74 C. C. A. 540; *Id.*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547; *Hockett v. Alston*, 3 Ind. T. 432, 58 S. W. 675; *In re Frazee*, 3 Ind. T. 590, 64 S. W. 545; *Tuttle v. Moore*, 3 Ind. T. 712, 64 S. W. 585; *Thompson v. Morgan*, 4 Ind. T. 412, 69 S. W. 920.

a noncitizen in possession of lands, holding the possession thereof under an agreement, lease, or improvement contract with either of said nations or tribes, or any citizen thereof, executed prior to January first, eighteen hundred and ninety-eight, may, as to lands not exceeding in amount one hundred and sixty acres, in defense of any action for the possession of said lands show that he is and has been in peaceable possession of such lands, and that he has while in such possession made lasting and valuable improvements thereon, and that he has not enjoyed the possession thereof a sufficient length of time to compensate him for such improvements. Thereupon the court or jury trying said cause shall determine the fair and reasonable value of such improvements and the fair and reasonable rental value of such lands for the time the same shall have been occupied by such person, and if the improvements exceed in value the amount of rents with which such persons should be charged the court, in its judgment, shall specify such time as will, in the opinion of the court, compensate such person for the balance due, and award him possession for such time unless the amount be paid by claimant within such reasonable time as the court shall specify. If the finding be that the amount of rents exceed the value of the improvements, judgment shall be rendered against the defendant for such sum, for which execution may issue.³

§ 396. **Authorizing sale of improvements where citizenship denied.**—[4]. That all persons who have heretofore made improvements on lands belonging to any one of the said tribes of Indians, claiming rights of citizenship, whose

³ *Hargrove v. Cherokee Nation*, 129 Fed. 186, 63 C. C. A. 276; *Brought v. Cherokee Nation*, 129 Fed. 193, 63 C. C. A. 350; *Wallace v. Adams*, 143 Fed. 716, 74 C. C. A. 540; *Id.*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547; *Brought v. Cherokee Nation*, 4 Ind. T. 462, 69 S. W. 937; *Hargrove v. Cherokee Nation*, 4 Ind. T. 129, 69 S. W. 823; *Hanks v. Hendricks*, 3 Ind. T. 415, 58 S. W. 669; *Barton v. Hulsey*, 4 Ind. T. 260, 69 S. W. 868; *Donohoo v. Howard*, 4 Ind. T. 433, 69 S. W. 927; *Swinney v. Kelley*, 5 Ind. T. 12, 76 S. W. 303; *Sharrock v. Kreiger*, 6 Ind. T. 466, 98 S. W. 161.

claims have been decided adversely under the act of Congress approved June tenth, eighteen hundred and ninety-six, shall have possession thereof until and including December thirty-first, eighteen hundred and ninety-eight; and may, prior to that time, sell or dispose of the same to any member of the tribe owning the land who desires to take the same in his allotment: Provided, that this section shall not apply to improvements which have been appraised and paid for, or payment tendered by the Cherokee Nation under the agreement with the United States approved by Congress March third, eighteen hundred and ninety-three.⁴

§ 397. Making tribe party to suit.—[5]. That before any action by any tribe or person shall be commenced under section three of this act it shall be the duty of the party bringing the same to notify the adverse party to leave the premises for the possession of which the action is about to be brought, which notice shall be served at least thirty days before commencing the action by leaving a written copy with the defendant, or, if he cannot be found, by leaving the same at his last known place of residence or business with any person occupying the premises over the age of twelve years, or, if his residence or business address cannot be ascertained, by leaving the same with any person over the age of twelve years upon the premises sought to be recovered and described in said notice; and if there be no person with whom said notice can be left, then by posting same on the premises.⁵

§ 398. Making tribe party to suit, continued.—[6]. That the summons shall not issue in such action until the chief or governor of the tribe, or person or persons bring-

⁴ Casteel v. McNeely, 4 Ind. T. 1, 64 S. W. 594; Brought v. Cherokee Nation, 4 Ind. T. 462, 69 S. W. 937; Daniels v. Miller, 4 Ind. T. 426, 69 S. W. 925.

⁵ Hargrove v. Cherokee Nation, 129 Fed. 186, 63 C. C. A. 276; Brought v. Cherokee Nation, 129 Fed. 192, 63 C. C. A. 350; Daniels v. Miller, 4 Ind. T. 426, 69 S. W. 925; Price v. Cherokee Nation, 5 Ind. T. 518, 82 S. W. 893.

ing suit in his own behalf, shall have filed a sworn complaint, on behalf of the tribe or himself, with the court, which shall, as near as practicable, describe the premises so detained, and shall set forth a detention without the consent of the person bringing said suit or the tribe, by one whose membership is denied by it: Provided, that if the chief or governor refuse or fail to bring suit in behalf of the tribe then any member of the tribe may make complaint and bring said suit.⁶

§ 399. **Regulating continuances.**—[7]. That the court in granting a continuance of any case, particularly under section three, may, in its discretion, require the party applying therefor to give an undertaking to the adverse party, with good and sufficient securities, to be approved by the judge of the court, conditioned for the payment of all damages and costs and defraying the rent which may accrue if judgment be rendered against him.

§ 400. **Restitution—Judgments for.**—[8]. That when a judgment for restitution shall be entered by the court the clerk shall, at the request of the plaintiff or his attorney, issue a writ of execution thereon, which shall command the proper officer of the court to cause the defendant or defendants to be forthwith removed and ejected from the premises and the plaintiff given complete and undisturbed possession of the same. The writ shall also command the said officer to levy upon the property of the defendant or defendants subject to execution, and also collect therefrom the costs of the action and all accruing costs in the service of the writ. Said writ shall be executed within thirty days.

§ 401. **Police jurisdiction conferred.**—[9]. That the jurisdiction of the court and municipal authority of the city of Fort Smith for police purposes in the state of Arkansas

⁶ De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624. See notes to three preceding sections.

is hereby extended over all that strip of land in the Indian Territory lying and being situate between the corporate limits of the said city of Fort Smith and the Arkansas and Poteau rivers, and extending up the said Poteau river to the mouth of Mill creek; and all the laws and ordinances for the preservation of the peace and health of said city, as far as the same are applicable, are hereby put in force therein: Provided, that no charge or tax shall ever be made or levied by said city against said land or the tribe or nation to whom it belongs.

§ 402. Limitation on right to bring certain actions.—[10]. That all actions for restitution of possession of real property under this act must be commenced by the service of a summons within two years after the passage of this act, where the wrongful detention or possession began prior to the date of its passage; and all actions which shall be commenced hereafter, based upon wrongful detention or possession committed since the passage of this act must be commenced within two years after the cause of action accrued. And nothing in this act shall take away the right to maintain an action for unlawful and forcible entry and detainer given by the act of Congress passed May second, eighteen hundred and ninety. (Twenty-sixth United States Statutes, page ninety-five.)¹

§ 403. Allotment—When.—[11]. That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the Commission heretofore appointed under acts of Congress, and known as the "Dawes Commission," shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citi-

¹ Barnett v. Way, 29 Okl. 780, 119 Pac. 418; De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624; Daniels v. Miller, 4 Ind. T. 426, 69 S. W. 925; Price v. Cherokee Nation, 5 Ind. T. 518, 82 S. W. 893.

zens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same; but all oil, coal, asphalt, and mineral deposits in the lands of any tribe are reserved to such tribe, and no allotment of such lands shall carry the title to such oil, coal, asphalt, or mineral deposits; and all townsites shall also be reserved to the several tribes, and shall be set apart by the Commission heretofore mentioned as incapable of allotment. There shall also be reserved from allotment a sufficient amount of lands now occupied by churches, schools, parsonages, charitable institutions, and other public buildings for their present actual and necessary use, and no more, not to exceed five acres for each school and one acre for each church and each parsonage, and for such new schools as may be needed; also sufficient land for burial grounds where necessary. When such allotment of the lands of any tribe has been by them completed, said Commission shall make full report thereof to the Secretary of the Interior for his approval: Provided, that nothing herein contained shall in any way affect any vested legal rights which may have been heretofore granted by act of Congress, nor be so construed as to confer any additional rights upon any parties claiming under any such act of Congress: Provided further, that whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home if the holder so desires: Provided further, that if the person to whom an allotment shall have been made shall be declared, upon appeal as herein provided for, by any of the courts of the United States in or for the aforesaid territory, to have been illegally accorded rights of citizenship, and for that or any other reason declared to be not entitled to any allotment, he shall be ousted and ejected from said lands; that all persons known as intruders who have been paid for their improvements under existing laws and have

not surrendered possession thereof who may be found under the provisions of this act to be entitled to citizenship shall, within ninety days thereafter, refund the amount so paid them, with six per centum interest, to the tribe entitled thereto; and upon their failure so to do said amount shall become a lien upon all improvements owned by such person in such territory, and may be enforced by such tribe; and unless such person makes such restitution no allotments shall be made to him: Provided further, that the lands allotted shall be nontransferable until after full title is acquired and shall be liable for no obligations contracted prior thereto by the allottee, and shall be nontaxable while so held: Provided further, that all towns and cities heretofore incorporated or incorporated under the provisions of this act are hereby authorized to secure, by condemnation or otherwise, all the lands actually necessary for public improvements, regardless of tribal lines; and when the same cannot be secured otherwise than by condemnation, then the same may be acquired as provided in sections nine hundred and seven and nine hundred and twelve, inclusive, of Mansfield's Digest of the Statutes of Arkansas.⁸

§ 404. Allotment records.—[12]. That when report of allotments of lands of any tribe shall be made to the Secretary of the Interior, as hereinbefore provided, he shall make a record thereof, and when he shall confirm such allotments the allottees shall remain in peaceable and undisturbed possession thereof, subject to the provisions of this act.⁹

⁸ *Cherokee Nation v. Hitchcock*, 187 U. S. 294, 23 Sup. Ct. 115, 47 L. Ed. 183; *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249, 29 Sup. Ct. 62, 53 L. Ed. 168; *Fleming v. McCurtain*, 215 U. S. 56, 30 Sup. Ct. 16, 54 L. Ed. 88; *Williams v. First Nat. Bank of Pauls Valley*, 10 Okl. 274, 95 Pac. 457; *Id.*, 216 U. S. 582, 30 Sup. Ct. 441, 54 L. Ed. 625; *Frame v. Bivens* (C. C.) 189 Fed. 785; *Henry Gas Co. v. United States*, 191 Fed. 132, 111 C. C. A. 612; *United States v. Lewis*, 5 Ind. T. 1, 76 S. W. 301.

⁹ *Fleming v. McCurtain*, 215 U. S. 56, 30 Sup. Ct. 16, 54 L. Ed. 88.

§ 405. Coal, oil and asphalt lands.—[13]. That the Secretary of the Interior is hereby authorized and directed from time to time to provide rules and regulations in regard to the leasing of oil, coal, asphalt, and other minerals in said Territory, and all such leases shall be made by the Secretary of the Interior; and any lease for any such minerals otherwise made shall be absolutely void. No lease shall be made or renewed for a longer period than fifteen years, nor cover the mineral in more than six hundred and forty acres of land, which shall conform as nearly as possible to the surveys. Lessees shall pay on each oil, coal, asphalt, or other mineral claim at the rate of one hundred dollars per annum, in advance, for the first and second years; two hundred dollars per annum, in advance, for the third and fourth years, and five hundred dollars, in advance, for each succeeding year thereafter, as advanced royalty on the mine or claim on which they are made. All such payments shall be a credit on royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advanced payments; and all lessees must pay said annual advanced payments on each claim, whether developed or undeveloped; and should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance shall then become and be the money and property of the tribe. Where any oil, coal, asphalt, or other mineral is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land, by the lessee or party operating the same, before operations begin: Provided, that nothing herein contained shall impair the rights of any holder or owner of a

leasehold interest in any oil, coal rights, asphalt, or mineral which have been assented to by act of Congress, but all such interest shall continue unimpaired hereby, and shall be assured to such holders or owners by leases from the Secretary of the Interior for the term not exceeding fifteen years, but subject to payment of advance royalties as herein provided, when such leases are not operated, to the rate of royalty on coal mined, and the rules and regulations to be prescribed by the Secretary of the Interior, and preference shall be given to such parties in renewals of such leases: And provided further, that when, under the customs and laws heretofore existing and prevailing in the Indian Territory, leases have been made of different groups or parcels of oil, coal, asphalt, or other mineral deposits, and possession has been taken thereunder and improvements made for the development of such oil, coal, asphalt, or other mineral deposits, by lessees or their assigns, which have resulted in the production of oil, coal, asphalt, or other mineral in commercial quantities by such lessees or their assigns, then such parties in possession shall be given preference in the making of new leases, in compliance with the directions of the Secretary of the Interior; and in making new leases due consideration shall be made for the improvements of such lessees, and in all cases of the leasing or renewal of leases of oil, coal, asphalt, and other mineral deposits preference shall be given to parties in possession who have made improvements. The rate of royalty to be paid by all lessces shall be fixed by the Secretary of the Interior.¹⁰

§ 406. Organization of municipalities.—[14]. That the inhabitants of any city or town in said territory having two hundred or more residents therein may proceed, by petition to the United States court in the district in which

¹⁰ *Cherokee Nation v. Hitchcock*, 187 U. S. 294, 23 Sup. Ct. 115, 47 L. Ed. 183; *McBride v. Farrington* (C. C.) 131 Fed. 797; *United States v. McMurray* (C. C.) 181 Fed. 723.

such city or town is located, to have the same incorporated as provided in chapter twenty-nine of Mansfield's Digest of the Statutes of Arkansas, if not already incorporated thereunder; and the clerk of said court shall record all papers and perform all the acts required of the recorder of the county or the clerk of the county court or the Secretary of State, necessary for the incorporation of any city or town, as provided in Mansfield's Digest, and such city or town government, when so authorized and organized, shall possess all the powers and exercise all the rights of similar municipalities in said state of Arkansas. All male inhabitants of such cities and towns over the age of twenty-one years, who are citizens of the United States or of either of said tribes, who have resided therein more than six months next before any election held under this act, shall be qualified voters at such election. That mayors of such cities and towns, in addition to their other powers, shall have the same jurisdiction in all civil and criminal cases arising within the corporate limits of such cities and towns as, and coextensive with, United States commissioners in the Indian Territory, and may charge, collect, and retain the same fees as such commissioners now collect and account for to the United States; and the marshal or other executive officer of such city or town may execute all processes issued in the exercise of the jurisdiction hereby conferred, and charge and collect the same fees for similar services, as are allowed to constables under the laws now in force in said territory.

All elections shall be conducted under the provisions of chapter fifty-six of said Digest, entitled "Elections," so far as the same may be applicable; and all inhabitants of such cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein. Such city or town governments shall in no case have any authority to impose upon or levy any tax

against any lands in said cities or towns until after title is secured from the tribe; but all other property, including all improvements on town lots, which for the purposes of this act shall be deemed and considered personal property, together with all occupations and privileges, shall be subject to taxation. And the councils of such cities and towns, for the support of the same and for school and other public purposes, may provide by ordinance for the assessment, levy, and collection annually of a tax upon such property, not to exceed in the aggregate two per centum of the assessed value thereof, in manner provided in chapter one hundred and twenty-nine of said Digest, entitled "Revenue," and for such purposes may also impose a tax upon occupations and privileges.

Such councils may also establish and maintain free schools in such cities and towns, under the provisions of sections sixty-two hundred and fifty-eight to sixty-two hundred and seventy-six, inclusive, of said Digest, and may exercise all the powers conferred upon special school districts in cities and towns in the state of Arkansas by the laws of said state when the same are not in conflict with the provisions of this act.

For the purposes of this section all the laws of said state of Arkansas herein referred to, so far as applicable, are hereby put in force in said territory; and the United States court therein shall have jurisdiction to enforce the same, and to punish any violation thereof, and the city or town councils shall pass such ordinances as may be necessary for the purpose of making the laws extended over them applicable to them and for carrying the same into effect: Provided, that nothing in this act, or in the laws of the state of Arkansas, shall authorize or permit the sale, or exposure for sale, of any intoxicating liquor in said territory, or the introduction thereof into said territory; and it shall be the duty of the district attorneys in said territory and the officers of such municipalities to prosecute all violators

of the laws of the United States relating to the introduction of intoxicating liquors into said territory, or to their sale, or exposure for sale, therein: Provided further, that owners and holders of leases or improvements in any city or town shall be privileged to transfer the same.¹¹

§ 407. **Townsite commissions.**—[15]. That there shall be a commission in each town for each one of the Chickasaw, Choctaw, Creek and Cherokee Tribes, to consist of one member to be appointed by the executive of the tribe, who shall not be interested in town property, other than his home; one person to be appointed by the Secretary of the Interior, and one member to be selected by the town. And if the executive of the tribe or the town fail to select members as aforesaid, they may be selected and appointed by the Secretary of the Interior.

Said commissions shall cause to be surveyed and laid out townsites where towns with a present population of two hundred or more are located, conforming to the existing survey so far as may be, with proper and necessary streets, alleys, and public grounds, including parks and cemeteries, giving to each town such territory as may be required for its present needs and reasonable prospective growth; and shall prepare correct plats thereof, and file one with the Secretary of the Interior, one with the clerk of the United States court, one with the authorities of the tribe, and one with the town authorities. And all town lots shall be appraised by said commission at their true value, excluding improvements; and separate appraisements shall be made of all improvements thereon; and no such appraisal shall be effective until approved by the Secretary of the Interior, and in case of disagreement by the members of such com-

¹¹ *Fortune v. Incorporated Town of Wilburton*, 142 Fed. 114, 73 C. C. A. 338, 4 L. R. A. (N. S.) 782, 6 Ann. Cas. 565; *Fortune v. Incorporated Town of Wilburton*, 5 Ind. T. 251, 82 S. W. 738, 5 Ann. Cas. 287; *Dennee v. Cromer*, 114 Fed. 623, 52 C. C. A. 403; *Missouri, K. & T. Ry. Co. v. Phelps*, 4 Ind. T. 706, 76 S. W. 285; *Zevely v. Welmer*, 5 Ind. T. 646, 82 S. W. 941, 956.

mission as to the value of any lot, said Secretary may fix the value thereof.

The owner of the improvements upon any town lot, other than fencing, tillage, or temporary buildings, may deposit in the United States treasury, Saint Louis, Missouri, one-half of such appraised value; ten per centum within two months and fifteen per centum more within six months after notice of appraisal, and the remainder in three equal annual installments thereafter, depositing with the Secretary of the Interior one receipt for each payment, and one with the authorities of the tribe, and such deposit shall be deemed a tender to the tribe of the purchase money for such lot.

If the owner of such improvements on any lot fails to make deposit of the purchase money as aforesaid, then such lot may be sold in the manner herein provided for the sale of unimproved lots; and when the purchaser thereof has complied with the requirements herein for the purchase of improved lots he may, by petition, apply to the United States court within whose jurisdiction the town is located for condemnation and appraisal of such improvements, and petitioner shall, after judgment, deposit the value so fixed with the clerk of the court; and thereupon the defendant shall be required to accept same in full payment for his improvements or remove same from the lot within such time as may be fixed by the court.

All town lots not improved as aforesaid shall belong to the tribe, and shall be in like manner appraised, and, after approval by the Secretary of the Interior, and due notice, sold to the highest bidder at public auction by said commission, but not for less than their appraised value, unless ordered by the Secretary of the Interior; and purchasers may in like manner make deposits of the purchase money with like effect, as in case of improved lots.

The inhabitants of any town may, within one year after the completion of the survey thereof, make such deposit

of ten dollars per acre for parks, cemeteries, and other public grounds laid out by said commission with like effect as for improved lots; and such parks and public grounds shall not be used for any purpose until such deposits are made.

The person authorized by the tribe or tribes may execute or deliver to any such purchaser, without expense to him, a deed conveying to him the title to such lands or town lots; and thereafter the purchase money shall become the property of the tribe; and all such moneys shall, when titles to all the lots in the towns belonging to any tribe have been thus perfected, be paid per capita to the members of the tribe: Provided, however, that in those townsites designated and laid out under the provisions of this act where coal leases are now being operated and coal is being mined there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines and a sufficient amount for all buildings and machinery for mining purposes: And provided further, that when the lessees shall cease to operate said mines, then, and in that event, the lots of land so reserved shall be disposed of as provided for in this act.¹²

§ 408. **Excessive holdings.**—[16]. That it shall be unlawful for any person, after the passage of this act, except as hereinafter provided, to claim, demand, or receive, for his own use or for the use of any one else, any royalty on oil, coal, asphalt, or other mineral, or on any timber or lumber, or any other kind of property whatsoever, or any

¹² *Ellis v. Fitzpatrick*, 118 Fed. 431, 55 C. C. A. 260; *Fraer v. Washington*, 125 Fed. 280, 60 C. C. A. 194; *In re Grayson*, 3 Ind. T. 497, 61 S. W. 984; *Butler v. Penn*, 3 Ind. T. 505, 61 S. W. 987; *Tuttle v. Moore*, 3 Ind. T. 712, 64 S. W. 585; *Walker v. Roberson*, 21 Okl. 894, 97 Pac. 609.

rents on any lands or property belonging to any one of said tribes or nations in said territory, or for any one to pay to any individual any such royalty or rents or any consideration therefor whatsoever; and all royalties and rents hereafter payable to the tribe shall be paid, under such rules and regulations as may be prescribed by the Secretary of the Interior, into the treasury of the United States to the credit of the tribe to which they belong: Provided, that where any citizen shall be in possession of only such amount of agricultural or grazing lands as would be his just and reasonable share of the lands of his nation or tribe and that to which his wife and minor children are entitled, he may continue to use the same or receive the rents thereon until allotment has been made to him: Provided further, that nothing herein contained shall impair the rights of any member of a tribe to dispose of any timber contained on his, her, or their allotment.¹³

§ 409. Excessive holder guilty of misdemeanor.—[17]. That it shall be unlawful for any citizen of any one of said tribes to inclose or in any manner, by himself or through another, directly or indirectly, to hold possession of any greater amount of lands or other property belonging to any such nation or tribe than that which would be his approximate share of the lands belonging to such nation or tribe and that of his wife and his minor children as per allotment herein provided; and any person found in such possession of lands or other property in excess of his share and that of his family, as aforesaid, or having the same in any manner inclosed, at the expiration of nine months after

¹³ *Southwestern Coal & Improvement Co. v. McBride*, 185 U. S. 499, 22 Sup. Ct. 763, 46 L. Ed. 1010; *Cherokee Nation v. Hitchcock*, 187 U. S. 294, 23 Sup. Ct. 115, 47 L. Ed. 183; *Atoka Coal & Mining Co. v. Adams*, 104 Fed. 471, 43 C. C. A. 651; *Fraer v. Washington*, 125 Fed. 280, 60 C. C. A. 194; *McBride v. Farrington* (C. C.) 131 Fed. 799; *Choctaw, O. & G. R. Co. v. Bond*, 160 Fed. 407, 87 C. C. A. 355; *Atoka Coal & Mining Co. v. Adams*, 3 Ind. T. 189, 53 S. W. 539; *Hubbard v. Chism*, 5 Ind. T. 95, 82 S. W. 686; *Walker v. Roberson*, 21 Okl. 894, 97 Pac. 609.

the passage of this act, shall be deemed guilty of a misdemeanor.¹⁴

§ 410. **Excessive holdings — Punishment for. — [18].** That any person convicted of violating any of the provisions of sections sixteen and seventeen of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than one hundred dollars, and shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. And the United States district attorneys in said territory are required to see that the provisions of said sections are strictly enforced and they shall at once proceed to dispossess all persons of such excessive holding of lands and to prosecute them for so unlawfully holding the same.¹⁵

§ 411. **Payments to be made direct to Indians.—[19].** That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

§ 412. **Commission authorized to employ help.—[20].** That the Commission hereinbefore named shall have au-

¹⁴ Choctaw, O. & G. R. Co. v. Bond, 6 Ind. T. 515, 98 S. W. 335.

¹⁵ Southwestern Coal & Improv. Co. v. McBride, 185 U. S. 499, 22 Sup. Ct. 763, 46 L. Ed. 1010; Atoka Coal & Mining Co. v. Adams, 3 Ind. T. 189, 53 S. W. 539.

thority to employ, with approval of the Secretary of the Interior, all assistance necessary for the prompt and efficient performance of all duties herein imposed, including competent surveyors to make allotments, and to do any other needed work, and the Secretary of the Interior may detail competent clerks to aid them in the performance of their duties.¹⁶

§ 413. Citizenship rolls—direction as to making.—[21]. That in making rolls of citizenship of the several tribes, as required by law, the Commission to the Five Civilized Tribes is authorized and directed to take the roll of Cherokee citizens of eighteen hundred and eighty (not including freedmen) as the only roll intended to be confirmed by this and preceding acts of Congress, and to enroll all persons now living whose names are found on said roll, and all descendants born since the date of said roll to persons whose names are found thereon; and all persons who have been enrolled by the tribal authorities who have heretofore made permanent settlement in the Cherokee Nation whose parents, by reason of their Cherokee blood, have been lawfully admitted to citizenship by the tribal authorities, and who were minors when their parents were so admitted; and they shall investigate the right of all other persons whose names are found on any other rolls and omit all such as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to citizenship under Cherokee laws.

It shall make a roll of Cherokee freedmen in strict compliance with the decree of the Court of Claims rendered the third day of February, eighteen hundred and ninety-six.

Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes,

¹⁶ *Martin v. United States*, 168 Fed. 198, 93 C. C. A. 484; *Hayes v. Barringer*, 7 Ind. T. 697, 104 S. W. 937.

eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said tribes.

Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

The roll of Creek freedmen made by J. W. Dunn, under authority of the United States, prior to March fourteenth, eighteen hundred and sixty-seven, is hereby confirmed, and said Commission is directed to enroll all persons now living whose names are found on said rolls, and all descendants born since the date of said roll to persons whose names are found thereon, with such other persons of African descent as may have been rightfully admitted by the lawful authorities of the Creek Nation.

It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all their descendants born to them since the date of the treaty.

It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall

be determined in such manner as shall be hereafter provided by Congress.

The several tribes may, by agreement, determine the right of persons who for any reason may claim citizenship in two or more tribes, and to allotment of lands and distribution of moneys belonging to each tribe; but if no such agreement be made, then such claimant shall be entitled to such rights in one tribe only, and may elect in which tribe he will take such right; but if he fail or refuse to make such selection in due time, he shall be enrolled in the tribe with whom he has resided, and there be given such allotments and distributions, and not elsewhere.

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: Provided, however, that nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choc-taws may have under the laws of or the treaties with the United States.

Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments and custodians of such rolls and records to deliver same to said Commission, and on their refusal or failure to do so to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be so enrolled, to appear before said Commission for enrollment, at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as

herein required, and to punish any one who may in any manner or by any means obstruct said work.

The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

The members of said Commission shall, in performing all duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavit or other paper to be filed or oath taken before said Commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense.¹⁷

§ 414. Allotments to members of another tribe.—[22]. That where members of one tribe, under intercourse laws, usages, or customs, have made homes within the limits and on the lands of another tribe they may retain and take allotment, embracing same under such agreement as may be made between such tribes respecting such settlers; but if no such agreement be made the improvements so made shall be appraised, and the value thereof, including all damages incurred by such settler incident to enforced removal, shall be paid to him immediately upon removal, out of any

¹⁷ *Stephens v. Cherokee Nation*, 174 U. S. 445, 19 Sup. Ct. 722, 43 L. Ed. 1041; *Cherokee Intermarriage Cases*, 203 U. S. 76, 27 Sup. Ct. 29, 51 L. Ed. 96; *Fleming v. McCurtain*, 215 U. S. 56, 30 Sup. Ct. 16, 54 L. Ed. 88; *United States ex rel. Lowe v. Fisher*, 223 U. S. 95, 32 Sup. Ct. 196, 56 L. Ed. 364; *Cherokee Nation and United States v. Whitmire*, 223 U. S. 108, 32 Sup. Ct. 200, 56 L. Ed. 370; *Kimberlin v. Commission to Five Civilized Tribes*, 104 Fed. 653, 44 C. C. A. 109; *Ikard v. Minter*, 4 Ind. T. 214, 69 S. W. 855; *Dick v. Ross*, 6 Ind. T. 85, 89 S. W. 664.

funds belonging to the tribe, or such settler, if he so desire, may make private sale of his improvements to any citizen of the tribe owning the lands: Provided, that he shall not be paid for improvements made on lands in excess of that to which he, his wife, and minor children are entitled to under this act.

§ 415. **Agricultural leases—Certain declared void.—**[23]. That all leases of agricultural or grazing land belonging to any tribe made after the first day of January, eighteen hundred and ninety-eight, by the tribe or any member thereof shall be absolutely void, and all such grazing leases made prior to said date shall terminate on the first day of April, eighteen hundred and ninety-nine, and all such agricultural leases shall terminate on January first, nineteen hundred; but this shall not prevent individuals from leasing their allotments when made to them as provided in this act, nor from occupying or renting their proportionate shares of the tribal lands until the allotments herein provided for are made.¹⁸

§ 416. **Directing payment of moneys.—**[24]. That all moneys paid into the United States treasury at Saint Louis, Missouri, under provisions of this act shall be placed to the credit of the tribe to which they belong; and the assistant United States treasurer shall give triplicate receipts therefor to the depositor.

§ 417. **Appropriation.—**[25]. That before any allotment shall be made of lands in the Cherokee Nation, there shall be segregated therefrom by the Commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased

¹⁸ *De Graffenreid v. Iowa Land & Trust Co.*, 20 Okl. 687, 95 Pac. 624; *Barton v. Hulsey*, 4 Ind. T. 260, 69 S. W. 868; *United States v. Lewis*, 5 Ind. T. 1, 76 S. W. 299; *Owens v. Eaton*, 5 Ind. T. 275, 82 S. W. 746; *Sharrock v. Kreiger*, 6 Ind. T. 466, 98 S. W. 161; *Scroggins v. Oliver*, 7 Ind. T. 740, 104 S. W. 1161; *Choctaw, O. & G. R. Co. v. Bond*, 160 Fed. 403, 87 C. C. A. 355.

by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement. That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee Nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee Nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States.

§ 418. **Laws of tribes not to be enforced.**—[26]. That on and after the passage of this act the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory.¹⁹

§ 419. **Indian inspector located in Indian Territory.**—[27]. That the Secretary of the Interior is authorized to locate one Indian inspector in Indian Territory, who may, under his authority and direction, perform any duties required of the Secretary of the Interior by law, relating to affairs therein.

§ 420. **Tribal courts abolished.**—[28]. That on the first day of July, eighteen hundred and ninety-eight, all

¹⁹ *Armstrong v. Wood* (C. C.) 195 Fed. 137; *McAllaster v. Edgerton*, 3 Ind. T. 704, 64 S. W. 583; *Nivens v. Nivens*, 4 Ind. T. 30, 64 S. W. 604, rehearing subsequently granted and decision reversed by Circuit Court of Appeals; *George v. Robb*, 4 Ind. T. 61, 64 S. W. 615.

tribal courts in Indian Territory shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and all civil and criminal causes then pending in any such court shall be transferred to the United States court in said territory by filing with the clerk of the court the original papers in the suit: Provided, that this section shall not be in force as to the Chickasaw, Choctaw, and Creek Tribes or Nations until the first day of October, eighteen hundred and ninety-eight.²⁰

²⁰ Hayes v. Barringer, 168 Fed. 221, 93 C. C. A. 507; In re Poff's Guardianship, 7 Ind. T. 59, 103 S. W. 765; Boudinot v. Boudinot, 2 Ind. T. 107, 48 S. W. 1019; Campbell v. Scott, 3 Ind. T. 462, 58 S. W. 719; George v. Robb, 4 Ind. T. 61, 64 S. W. 615.

CHAPTER 43

CHEROKEE AGREEMENT, APPROVED JULY 1, 1902

(CHAPTER 1375, 32 STAT. 716)

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DEFINITION OF WORDS EMPLOYED HEREIN

§ 421. Definition — “Nation” — “Tribe.” — [1]. The words “nation” and “tribe” shall each be held to refer to the Cherokee Nation or Tribe of Indians in Indian Territory.

§ 422. Definition—“Principal chief.”—[2]. The words “principal chief,” or “chief executive” shall be held to mean the principal chief of said tribe.

§ 423. Definition—“Dawes Commission.”—[3]. The words “Dawes Commission” or “Commission” shall be held

to mean the United States Commission to the Five Civilized Tribes.

§ 424. **Definition—"Minor."**—[4]. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.

§ 425. **Definition—"Allottable lands."**—[5]. The terms "allottable lands" or "lands allottable" shall be held to mean all the lands of the Cherokee Tribe not herein reserved from allotment.

§ 426. **Definition—"Select."**—[6]. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for particular tracts of land.

§ 427. **Definition—"Member."**—[7]. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Cherokee Nation, in the Indian Territory.

§ 428. **Masculine to include feminine—Plural to include singular.**—[8]. Every word in this act importing the masculine gender may extend and be applied to females as well as males, and the use of the plural may include also the singular, and vice versa.

APPRAISEMENT OF LANDS

§ 429. **Appraisement of lands.**—[9]. The lands belonging to the Cherokee Tribe of Indians in Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: Provided, that in the determination of the value of such land consideration shall not be given to the location thereof, to any timber thereon, or to any mineral deposits contained therein, and shall be made without reference to improvements which may be located thereon.

§ 430. Appraisement of lands.—[10]. The appraisement, as herein provided, shall be made by the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior.

ALLOTMENT OF LANDS

§ 431. Allotment of lands.—[11]. There shall be allotted by the Commission to the Five Civilized Tribes and to each citizen of the Cherokee Tribe, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the government survey, which land may be selected by each allottee so as to include his improvements.¹

§ 432. Legal subdivisions.—[12]. For the purpose of making allotments and designating homesteads hereunder, the forty-acre, or quarter of a quarter section, subdivision established by the government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

§ 433. Homestead nonalienable.—[13]. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said home-

¹ Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; Gritts v. Fisher, 224 U. S. 640, 32 Sup. Ct. 580, 56 L. Ed. 928; Henry Gas Co. v. United States, 191 Fed. 133, 111 O. C. A. 612; Ross v. Wright, 29 Okl. 186, 116 Pac. 949.

stead. During the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.²

§ 434. Allotted lands—Restrictions upon alienation.— [14]. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act.³

§ 435. Allotted lands may be alienated. — [15]. All lands allotted to the members of said tribe, except such lands as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent.⁴

§ 436. Preliminary Cherokee allotments confirmed.— That no proceedings heretofore had with respect to allotments in the Cherokee Nations shall be held invalid on the ground that they were had before there was authority to begin the work of allotment in said nation: Provided, that nothing herein shall be construed as validating any filings heretofore made on lands segregated for the Delaware Indians.⁵

§ 437. Homestead to be designated.—[16]. If for any reason an allotment should not be selected or a homestead

² Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; Whitmire v. Trapp, 33 Okl. 429, 126 Pac. 578; Welles v. Audrian (Okl.) 128 Pac. 254; The 30000 Land Suit, 199 Fed. 811.

³ Truskett v. Closser, 198 Fed. 835, 117 C. C. A. 477; Allen v. Oliver, 31 Okl. 356, 121 Pac. 226, pending on writ of error in Supreme Court of United States; 26 Opinions Attorney General, 354; Jefferson v. Winkler, 26 Okl. 653, 110 Pac. 755; In re Washington's Estate (Okl.) 128 Pac. 1079; Landrum v. Graham, 22 Okl. 458, 98 Pac. 432; Bledsoe v. Wortman (Okl.) 129 Pac. 841.

⁴ See cases cited under previous section.

⁵ This section is not part of the Cherokee Agreement, but an extract from Act April 21, 1904, c. 1402, 33 Stat. 205.

designated by or on behalf of any member of the tribe, it shall be the duty of said Commission to make said selection and designation.

§ 438. Minimum legal subdivisions.—[17]. In the making of allotments and in the designation of homesteads for members of said tribe, said Commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in section twelve hereof.

§ 439. Excessive holdings.—[18]. It shall be unlawful after ninety days after the ratification of this act by the Cherokees for any member of the Cherokee Tribe to inclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred and ten acres of average allottable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe; and any member of said tribe found in such possession of lands, or having the same in any manner inclosed, after the expiration of ninety days after the date of the ratification of this act shall be deemed guilty of a misdemeanor.

§ 440. Excessive holding—Penalty for.—[19]. Any persons convicted of violating any of the provisions of section eighteen of this act shall be punished by a fine of not less than one hundred dollars, shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. The United States district attorney for the northern district is required to see that the provisions of said section eighteen are strictly enforced, and he shall immediately, after the expiration of the ninety days after the ratification of this

act, proceed to dispossess all persons of such excessive holdings of lands and to prosecute them for so unlawfully holding the same, and the Commission to the Five Civilized Tribes shall have authority to make investigations of all violations of section eighteen and make report thereon to the United States district attorney.

§ 441. **Enrolled members dying, not to participate.**—[20]. If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to the first day of September, nineteen hundred and two, and before receiving his allotment, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: Provided, that the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and proper time, the Dawes Commission shall designate the lands thus to be allotted.

§ 442. **Allotment certificates conclusive evidence of title.**—[21]. Allotment certificates issued by the Dawes Commission shall be conclusive evidence of the right of an allottee to the tract of land described therein, and the United States Indian agent for the Union Agency shall, under the direction of the Secretary of the Interior, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to him, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.⁶

⁶ *Truskett v. Closser*, 198 Fed. 835, 117 C. C. A. 477.

§ 443. Allotment controversy—Jurisdiction of.—[22]. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.⁷

§ 444. Delaware-Cherokee controversies. — [23]. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eight, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit

⁷ *Lynch v. Harris*, 33 Okl. 23, 124 Pac. 50; *Lynch v. Harris*, 33 Okl. 36, 124 Pac. 55.

shall be advanced on the dockets of said courts and determined at the earliest time practicable.^a

RESERVATIONS

§ 445. Reservations.—[24]. The following lands shall be reserved from the allotment of lands herein provided for:

(a) All lands set apart for townsites by the provisions of the act of Congress of June twenty-eight, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), the provisions of the act of Congress of May thirty-first, nineteen hundred (Thirty-First Statutes, page two hundred and twenty-one), and by the provisions of this act.

(b) All lands to which, upon the date of the ratification of this act, any railroad company may, under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses only, connected with the maintenance and operation of the railroad.

(c) All lands selected for town cemeteries not to exceed twenty acres each.

(d) One acre of land for each Cherokee schoolhouse not included in townsites or herein otherwise provided for.

(e) Four acres for Willie Halsell College at Vinita.

(f) Four acres for Baptist Mission school at Tahlequah.

(g) Four acres for Presbyterian school at Tahlequah.

(h) Four acres for Park Hill Mission school south of Tahlequah.

(i) Four acres for Elm Springs Mission school at Barren Fork.

(j) Four acres for Dwight Mission school at Sallisaw.

(k) Four acres for Skiatook Mission near Skiatook.

^a *Delaware Indians v. Cherokee Nation*, 193 U. S. 127, 24 Sup. Ct. 342, 48 L. Ed. 646.

(1) Four acres for Luthern Mission school on Illinois river, north of Tahlequah.

(m) Sufficient ground for burial purposes where neighborhood cemeteries are now located, not to exceed three acres each.

(n) One acre for each church house outside of towns.

(o) The square now occupied by the capitol building at Tahlequah.

(p) The grounds now occupied by the national jail at Tahlequah.

(q) The grounds now occupied by the Cherokee Advocate printing office at Tahlequah.

(r) Forty acres for the Cherokee Male Seminary near Tahlequah.

(s) Forty acres for the Cherokee Female Seminary at Tahlequah.

(t) One hundred and twenty acres for the Cherokee Orphan Asylum on Grand river.

(u) Forty acres for colored high school in Tahlequah district.

(v) Forty acres for the Cherokee Insane Asylum.

(w) Four acres for the school for blind, deaf, and dumb children near Fort Gibson.

The acre so reserved for any church or schoolhouse in any quarter section of land shall be located where practicable in a corner of such quarter section adjacent to the section lines thereof.

Provided, that the Methodist Episcopal Church South may, within twelve months after the ratification of this act, pay ten dollars per acre for the one hundred and sixty acres of land adjacent to the town of Vinita, and heretofore set apart by act of the Cherokee National Council for the use of said church for missionary and educational purposes, and now occupied by Willie Halsell College (formerly Galloway College), and shall thereupon receive title

thereto; but if said church fail so to do it may continue to occupy said one hundred and sixty acres of land as long as it uses same for the purposes aforesaid.

Any other school or college in the Cherokee Nation which claims to be entitled under the law to a greater number of acres than is set apart for said school or college by section twenty-four of this act may have the number of acres to which it is entitled by law. The trustees of such school or college shall, within sixty days after the ratification of this act, make application to the Secretary of the Interior for the number of acres to which such school or college claims to be entitled, and if the Secretary of the Interior shall find that such school or college is, under the laws and treaties of the Cherokee Nation in force prior to the ratification of this act, entitled to a greater number of acres of land than is provided for in this act, he shall so determine and his decision shall be final. The amount so found by the Secretary of the Interior shall be set apart for the use of such college or school as long as the same may be used for missionary and educational purposes: Provided, that the trustees of such school or college shall pay ten dollars per acre for the number of acres so found by the Secretary of the Interior and which have been heretofore set apart by act of the Cherokee National Council for use of such school or college for missionary or educational purposes, and upon the payment of such sum within sixty days after the decision of the Secretary of the Interior said college or school may receive a title to such land.

ROLL OF CITIZENSHIP

§ 446. Rolls of citizenship.—[25]. The roll of citizens of the Cherokee Nation shall be made as of September first, nineteen hundred and two, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

§ 447. **Rolls of citizenship.**—[26]. The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in section twenty-five hereof, shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, eighteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

§ 448. **Rolls of citizenship.**—[27]. Such rolls shall in all other respects be made in strict compliance with the provisions of section twenty-one of the act of Congress approved June twenty-eight, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), and the act of Congress approved May thirty-first, nineteen hundred (Thirty-First Statutes, page two hundred and twenty-one).

§ 449. **Rolls of citizenship.**—[28]. No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

§ 450. **Enrollment when approved by Secretary final.**—[29]. For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as herein provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee Tribe, upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Inte-

rior lists embracing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.*

§ 451. Enrollment of infant children.—[30]. During the months of September and October, in the year nineteen hundred and two, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee Nation on or before the first day of September, nineteen hundred and two, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of October, nineteen hundred and two.

§ 452. Not to participate in allotment if name not on tribal roll or died prior to September 1, 1902.—[31]. No person whose name does not appear upon the roll prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Cherokee Tribe, and those whose names appear thereon shall participate in the manner set forth in this act: Provided, that no allotment of land or other tribal property shall be made to any person, or to the heirs of any person, whose name is on said roll and who died prior to the first day of September, nineteen hundred and two. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before

* *Muskra v. United States*, 219 U. S. 346, 31 Sup. Ct. 250, 55 L. Ed. 246; *Cherokee Intermarriage Cases*, 203 U. S. 76, 27 Sup. Ct. 29, 51 L. Ed. 96; *United States ex rel. Lowe v. Fisher*, 223 U. S. 95, 32 Sup. Ct. 196, 56 L. Ed. 364; *Cherokee Nation and United States v. Whitmire*, 223 U. S. 108, 32 Sup. Ct. 200, 56 L. Ed. 370.

said date, and any person or persons who may conceal the death of any one on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Cherokee Nation of the lands, other tribal property, and proceeds so obtained.

SCHOOLS

§ 453. **Schools.**—[32]. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of children of Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results; said schools to be under the supervision of a supervisor appointed by the Secretary and a school board elected by the National Council.

§ 454. **Schools.**—[33]. All teachers shall be examined by said supervisor, and said school board and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed; but where all qualifications are equal, preference shall be given to citizens of the Cherokee Nation in such employment.

§ 455. **Schools.**—[34]. All moneys for carrying on the schools shall be appropriated by the Cherokee National Council, not to exceed the amount of the Cherokee school fund; but if the council fail or refuse to make the neces-

sary appropriations, the Secretary of the Interior may direct the use of a sufficient amount of the school fund to pay all necessary expenses for the efficient conduct of the schools, strict account therefor to be rendered to him and the principal chief.

§ 456. **Schools.**—[35]. All accounts for expenditures in carrying on the schools shall be examined and approved by said supervisor, and also by the general superintendent of Indian schools in the Indian Territory, before payment thereof is made.

§ 457. **Schools.**—[36]. The interest arising from the Cherokee orphan fund shall be used, under the direction of the Secretary of the Interior, for maintaining the Cherokee Orphan Asylum for the benefit of the Cherokee orphan children.

ROADS

§ 458. **Roads.**—[37]. Public highways or roads two rods in width, being one rod on each side of the section line, may be established along all section lines without any compensation being paid therefor, and all allottees, purchasers, and others shall take the title to such lands subject to this provision; and public highways or roads may be established elsewhere, whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues and to be paid by the Cherokee Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid for in the same manner.¹⁰

¹⁰ *Kansas Natural Gas Co. v. Haskell* (C. C.) 172 Fed. 545.

TOWNSITES

§ 459. Townsites.—[38]. The lands which may hereafter be set aside and reserved for townsites upon the recommendation of the Dawes Commission under the provisions of the act of Congress approved May thirty-first, nineteen hundred (Thirty-First Statutes, page two hundred and twenty-one), shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such townsites, not to exceed six hundred and forty acres for each townsite.

§ 460. Townsites—Compensation to owner for improvements.—[39]. Whenever any tract of land shall be set aside by the Secretary of the Interior for townsite purposes, as provided in said act of May thirty-first, nineteen hundred, or by the terms of this act, which is occupied at the time of such segregation by any member of the Cherokee Nation, such occupant shall be allowed to purchase any lot upon which he then has improvements other than fences, tillage, and temporary improvements, in accordance with the provisions of the act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), or, if he so elects, the lot will be sold under rules and regulations to be prescribed by the Secretary of the Interior, and he shall be fully compensated for his improvements thereon out of the funds of the tribe arising from the sale of the townsites, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe, and one by the occupant of the land, said board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriations for surveying, laying out, platting, and selling townsites.

§ 461. Townsites where population less than two hundred.—[40]. All townsites which may hereafter be set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the act of Congress approved May thirty-first, nineteen hundred (Thirty-First Statutes, page two hundred and twenty-one), with the additional acreage added thereto, as well as all townsites set aside under the provisions of this act having a population of less than two hundred, shall be surveyed, laid out, platted, appraised, and disposed of in like manner, and with like preference rights accorded to owners of improvements as other townsites in the Cherokee Nation are surveyed, laid out, platted, appraised, and disposed of under the act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), as modified or supplemented by the act of May thirty-first, nineteen hundred: Provided, that as to the townsites set aside as aforesaid the owner of the improvements shall be required to pay the full appraised value of the lot instead of the percentage named in said act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five).

§ 462. Town lots—Preference right to purchase.—[41]. Any person being in possession or having the right to the possession of any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the act of Congress approved May thirty-first, nineteen hundred (Thirty-First Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any townsite act of the Cherokee Nation, and owning improvements thereon, other than temporary buildings, fencing, or tillage, shall have the right to purchase the same at one-fourth of the appraised value thereof.

§ 463. Town lots—Preference right to purchase.—[42]. Any person being in possession of, or having the right to the possession of, any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the act of Congress, approved May thirty-first, nineteen hundred (Thirty-First Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any townsite act of the Cherokee Nation, and not having any improvements thereon, shall have the right to purchase the same at one-half of the appraised value thereof.

§ 464. Town lots—Preference right to purchase.—[43]. Any citizen in rightful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase same by paying one-half the appraised value thereof: Provided, that any other person in undisputed possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase such lot by paying the appraised value thereof.

§ 465. Town lots—Unimproved, how sold.—[44]. All lots not having thereon improvements other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after appraisement, under the direction of the Secretary of the Interior, after due advertisement, at public auction, to the highest bidder, at not less than their appraised value.

§ 466. Town lots—Failure to purchase.—[45]. When the appraisement of any town lot is made and approved, the townsite commission shall notify the claimant thereof of the amount of appraisement, and he shall, within sixty

days thereafter, make payment of ten per centum of the amount due for the lot, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money he shall pay in three equal annual installments without interest; but if the claimant of any such lot fail to purchase same or make the first and second payments aforesaid or make any other payment within the time specified, the lot and improvements shall be sold at public auction to the highest bidder, under the direction of the Secretary of the Interior, at a price not less than its appraised value.

§ 467. Town lots—How sold when owner of improvements fails to purchase.—[46]. When any improved lot shall be sold at public auction because of the failure of the person owning improvements thereon to purchase same within the time allowed in said act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), said improvements shall be appraised by a committee, one member of which shall be selected by the owner of the improvements and one member by the purchaser of said lot; and in case the said committee is not able to agree upon the value of said improvements, the committee may select a third member, and in that event the determination of the majority of the committee shall control. Said committee of appraisement shall be paid such compensation for their services by the two parties in interest, share and share alike, as may be agreed upon, and the amount of said appraisement shall be paid by the purchaser of the lot to the owner of the improvements in cash within thirty days after the decision of the committee of appraisement.

§ 468. Town lots—Terms of sale.—[47]. The purchaser of any unimproved town lot sold at public auction shall pay twenty-five per centum of the purchase money at the time of the sale, and within four months thereafter he shall pay twenty-five per centum additional, and the remainder

of the purchase money he shall pay in two equal annual installments without interest.

§ 469. Towns of less than two hundred population.—[48]. Such towns in the Cherokee Nation as may have a population of less than two hundred people not otherwise provided for, and which, in the judgment of the Secretary of the Interior, should be set aside as townsites, shall have their limits defined as soon as practicable after the approval of this act in the same manner as provided for other townsites.

§ 470. Cemeteries.—[49]. The town authorities of any townsite in said Cherokee Nation may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from said town, to embrace such number of acres as may be deemed necessary for such purpose. The townsite commission shall appraise the same at its true value, and the town may purchase the same within one year from the approval of the survey by paying the appraised value. If any citizen have improvements thereon, said improvements shall be appraised by said townsite commission and paid for by the town: Provided, that lands already laid out by tribal authorities for cemeteries shall be included in the cemeteries herein provided for without cost to the towns, and the holdings of the burial lots therein now occupied for such purpose shall in no wise be disturbed: And provided further, that any park laid out and surveyed in any town shall be duly appraised at a fair valuation, and the inhabitants of said town shall, within one year after the approval of the survey and the appraisement of said park by the Secretary of the Interior, pay the appraised value to the proper officer for the benefit of the tribe.

§ 471. Expenses of allotments and townsites.—[50]. The United States shall pay all expenses incident to surveying, platting, and disposition of town lots, and all allot-

ments of lands made under the provisions of this plan of allotment, except where the town authorities may have been or may be duly authorized to survey and plat their respective towns at the expense of such towns.

§ 472. Town lots—When may be taxed.—[51]. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided.

§ 473. Town lots—Failure of purchaser to pay purchase price.—[52]. If the purchaser of any town lot fail to make payment of any sum when due, the same shall thereafter bear six per centum interest per annum until paid.

§ 474. Lots for churches.—[53]. All lots or parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisal, shall be conveyed gratuitously to the churches to which such improvements belong, and if such churches have inclosed other adjoining lots actually necessary for their use, they may purchase the same by paying the appraised value thereof.

§ 475. Townsite commissions.—[54]. Whenever the chief executive of the Cherokee Nation fails or refuses to appoint a townsite commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the townsite commissioners appointed by the chief executive to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

§ 476. Payment for lots.—[55]. The purchaser of any town lot may at any time pay the full amount of the purchase money, and he shall thereupon receive title therefor.

§ 477. **Who may bid at lot sales.**—[56]. Any person may bid for and purchase any lot sold at public auction as herein provided.

§ 478. **United States may acquire necessary lots.**—[57]. The United States may purchase in any town in the Cherokee Nation suitable lands for courthouses, jails, or other necessary public purposes for its use by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such lands are needed, and if any person have improvements thereon the same shall be appraised in like manner as other town property, and shall be paid for by the United States.

TITLES

§ 479. **Patents to allotments.**—[58]. The Secretary of the Interior shall furnish the principal chief with blank patents necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, or when any allotment has been so ascertained and fixed that title should under the provisions of this act be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

§ 480. **Patents to be approved by Secretary.**—[59]. All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his patent.

§ 481. **Acceptance of patent—Effect of.**—[60]. Any allottee accepting such patent shall be deemed to assent to the allotment and conveyance of all the lands of the tribe as provided in this act, and to relinquish all his right, title, and interest to the same, except in the proceeds of lands reserved from allotment.

§ 482. **Acceptance of patents for minors, etc.—[61].** The acceptance of patents for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe.

§ 483. **Patents to be recorded.—[62].** All patents, when so executed and approved, shall be filed in the office of the Dawes Commission, and recorded in a book provided for the purpose, until such time as Congress shall make other suitable provision for record of land titles, without expense to the grantee, and such records shall have like effect as other public records.

MISCELLANEOUS

§ 484. **Tribal government to expire.—[63].** The tribal government of the Cherokee Nation shall not continue longer than March fourth, nineteen hundred and six.

§ 485. **Tribal revenues.—[64].** The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations to be prescribed by the said Secretary.

§ 486. **Commission's authority conferred upon Secretary.—[65].** All things necessary to carry into effect the provisions of this act, not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

§ 487. **Per capita payments.—[66].** All funds of the tribe, and all moneys accruing under the provisions of this act, shall be paid out under the direction of the Secretary of the Interior, and when required for per capita payments shall be paid directly to each individual by an appointed officer of the United States, under the direction of the Secretary of the Interior.

§ 488. Payment of tribal indebtedness.—[67]. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the ratification of this act which may have lawfully been contracted, and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law hereafter and prior to the dissolution of the tribal government, such payments to be made from any funds in the United States treasury belonging to said tribe, and all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such payments at the earliest time practicable and he shall make all needed rules and regulations to carry this provision into effect.

§ 489. Tribal citizenship—Jurisdiction conferred upon Court of Claims in certain cases.—[68]. Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee Tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution, or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims

shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.¹¹

§ 490. **No contest after nine months.**—[69]. After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee Tribe as provided in this act, no contest shall be instituted against such selection, and as early thereafter as practicable patent shall issue therefor.

§ 491. **Allotments—By whom selected.**—[70]. Allotments may be selected and homesteads designated for minors by the father or mother, if citizens, or by a guardian, or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons, and soldiers and sailors of the United States on duty outside of the Indian Territory, by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable persons akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

§ 492. **Allotments around National Seminary.**—[71]. Any allottee taking as his allotment lands located around the Cherokee National Male Seminary, the Cherokee National Female Seminary, or Cherokee Orphan Asylum which have not been reserved from allotment as herein provided, and upon which buildings, fences, or other property of the Cherokee Nation are located, such buildings, fences, or other property shall be appraised at the true value thereof and

¹¹ *Eastern Cherokees v. United States*, 225 U. S. 572, 32 Sup. Ct. 707, 56 L. Ed. 1212; *United States v. Cherokee Nation*, 202 U. S. 101, 26 Sup. Ct. 588, 50 L. Ed. 949.

be paid for by the allottee taking such lands as his allotment, and the money to be paid into the treasury of the United States to the credit of the Cherokee Nation. .

§ 493. **Regulating renting allotments.**—[72]. Cherokee citizens may rent their allotments when selected for a term not to exceed one year for grazing purposes only, and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same; but leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes and for mineral purposes may also be made with the approval of the Secretary of the Interior and not otherwise. Any agreement or lease of any kind or character violative of this section shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotments shall not be liable to any tribal tax, but when cattle are introduced into the Cherokee Nation and grazed on lands not selected as allotments by citizens the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section twenty-one hundred and seventeen of the Revised Statutes of the United States shall not hereafter apply to Cherokee lands.¹²

§ 494. **Treaties or laws in conflict with not to be in force.**—[73]. The provisions of section thirteen of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, and no act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation except sections fourteen and twenty-seven of

¹² *Jennings v. Wood*, 192 Fed. 507, 112 C. C. A. 657; *Almeda Oil Co. v. Kelley*, 35 Okl. 525, 130 Pac. 931; *Alluwee Oil Co. v. Shufflin*, 32 Okl. 808, 124 Pac. 15.

said last-mentioned act, which shall continue in force as if this agreement had not been made.

§ 495. **Not to be effective until ratified.**—[74]. This act shall not take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following:

§ 496. **Procedure upon ratification.**—[75]. The principal chief shall, within ten days after the passage of this act by Congress, make public proclamation that the same shall be voted upon at a special election to be held for that purpose within thirty days thereafter, on a certain date therein named, and he shall appoint such officers and make such other provisions as may be necessary for holding such election. The votes cast at such election shall be forthwith duly certified as required by Cherokee law, and the votes shall be counted by the Cherokee National Council, if then in session, and if not in session the principal chief shall convene an extraordinary session for the purpose, in the presence of a member of the Commission to the Five Civilized Tribes, and said member and the principal chief shall jointly make certificate thereof and proclamation of the result, and transmit the same to the President of the United States.

Approved July 1, 1902. Ratified by Cherokees August 7, 1902.

§ 496a. **Townsite at Dewey provided for by Act May 29, 1908.**—[13]. That the Secretary of the Interior is hereby authorized to set aside for townsite purposes at Dewey, Oklahoma, the south half of the northwest quarter of the northwest quarter, and the northeast quarter of the northwest quarter of the northwest quarter of section twenty-eight, township twenty-seven north, range thirteen east, formerly allotted to Julia Lewis, who failed to establish her citizenship in the Cherokee Nation.

That the Secretary of the Interior is directed to subdivide these lands in accordance with the present streets and alleys laid out on such lands and to dispose of such lands and place the proceeds derived therefrom to the credit of the Cherokee Nation: Provided, that the owners of permanent and substantial improvements on such lots shall have the preference right of purchasing their lots for cash at a price not to exceed two hundred dollars per acre: Provided further, that all unimproved lots shall be sold at public auction to the highest bidder for cash: And provided further, that the expense of surveying, platting, laying out, and selling such lands shall be deducted from the proceeds of such sale.¹⁸

¹⁸ 35 Stat. 448, c. 216.

CHAPTER 44

ORIGINAL CHOCTAW-CHICKASAW ALLOTMENT AGREEMENT, ADOPTED AS SECTION 29 ACT OF JUNE 28, 1898

(CHAPTER 517, 30 STAT. 495-505)

- § 497. Submission of Atoka Agreement.
- 498. Parties to Atoka Agreement.
- 499. Allotment to Choctaws and Chickasaws.
- 500. Coal and asphalt reservation.
- 501. Choctaw and Chickasaw freedmen.
- 502. Choctaw and Chickasaw freedmen, allotment to.
- 503. Appraisement for allotment purposes.
- 504. Preference right to select allotment.
- 505. Alienation of allotted lands.
- 506. Contracts, violation of agreement.
- 507. Jurisdiction conferred upon Commission.
- 508. Title to allotted lands.
- 509. Railroads.
- 510. Townsites.
- 511. Cemeteries, churches, etc.
- 512. Coal and asphalt lands reserved.
- 513. Jurisdiction conferred upon United States courts.
- 514. Acts of Indian Council to be approved by President.
- 515. Tribal governments to continue for eight years.
- 516. Per capita payments.
- 517. Controversy with other tribes.
- 518. Choctaws and Chickasaws to become citizens of the United States.
- 519. Orphan lands in Mississippi.

§ 497. Submission of Atoka Agreement.—[29]. That the agreement made by the Commission to the Five Civilized Tribes with commissions representing the Choctaw and Chickasaw Tribes of Indians on the twenty-third day of April, eighteen hundred and ninety-seven, as herein amended, is hereby ratified and confirmed, and the same shall be of full force and effect if ratified before the first day of December, eighteen hundred and ninety-eight, by a majority of the whole number of votes cast by the members of said tribes at an election held for that purpose; and the executives of said tribes are hereby authorized and directed to make public proclamation that said agreement

That the Secretary of the Interior is directed to subdivide these lands in accordance with the present streets and alleys laid out on such lands and to dispose of such lands and place the proceeds derived therefrom to the credit of the Cherokee Nation: Provided, that the owners of permanent and substantial improvements on such lots shall have the preference right of purchasing their lots for cash at a price not to exceed two hundred dollars per acre: Provided further, that all unimproved lots shall be sold at public auction to the highest bidder for cash: And provided further, that the expense of surveying, platting, laying out, and selling such lands shall be deducted from the proceeds of such sale.¹⁸

¹⁸ 35 Stat. 448, c. 216.

CHAPTER 44

ORIGINAL CHOCTAW-CHICKASAW ALLOTMENT AGREEMENT, ADOPTED AS SECTION 29 ACT OF JUNE 28, 1898

(CHAPTER 517, 30 STAT. 495-505)

- § 497. Submission of Atoka Agreement.
- 498. Parties to Atoka Agreement.
- 499. Allotment to Choctaws and Chickasaws.
- 500. Coal and asphalt reservation.
- 501. Choctaw and Chickasaw freedmen.
- 502. Choctaw and Chickasaw freedmen, allotment to.
- 503. Appraisement for allotment purposes.
- 504. Preference right to select allotment.
- 505. Alienation of allotted lands.
- 506. Contracts, violation of agreement.
- 507. Jurisdiction conferred upon Commission.
- 508. Title to allotted lands.
- 509. Railroads.
- 510. Townsites.
- 511. Cemeteries, churches, etc.
- 512. Coal and asphalt lands reserved.
- 513. Jurisdiction conferred upon United States courts.
- 514. Acts of Indian Council to be approved by President.
- 515. Tribal governments to continue for eight years.
- 516. Per capita payments.
- 517. Controversy with other tribes.
- 518. Choctaws and Chickasaws to become citizens of the United States.
- 519. Orphan lands in Mississippi.

§ 497. Submission of Atoka Agreement.—[29]. That the agreement made by the Commission to the Five Civilized Tribes with commissions representing the Choctaw and Chickasaw Tribes of Indians on the twenty-third day of April, eighteen hundred and ninety-seven, as herein amended, is hereby ratified and confirmed, and the same shall be of full force and effect if ratified before the first day of December, eighteen hundred and ninety-eight, by a majority of the whole number of votes cast by the members of said tribes at an election held for that purpose; and the executives of said tribes are hereby authorized and directed to make public proclamation that said agreement

shall be voted on at the next general election, or at any special election to be called by such executives for the purpose of voting on said agreement; and at the election held for such purpose all male members of each of said tribes qualified to vote under his tribal laws shall have the right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not: Provided, that no person whose right to citizenship in either of said tribes or nations is now contested in original or appellate proceedings before any United States court shall be permitted to vote at said election: Provided further, that the votes cast in both said tribes or nations shall be forthwith returned duly certified by the precinct officers to the national secretaries of said tribes or nations, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and national secretary of the Choctaw Nation, the governor and national secretary of the Chickasaw Nation, and a member of the Commission to the Five Civilized Tribes, to be designated by the chairman of said Commission; and said board shall meet without delay at Atoka, in the Indian Territory, and canvass and count said votes and make proclamation of the result; and if said agreement as amended be so ratified, the provisions of this act shall then only apply to said tribes where the same do not conflict with the provisions of said agreement; but the provisions of said agreement, if so ratified, shall not in any manner affect the provisions of section fourteen of this act, which said amended agreement is as follows:¹

§ 498. Parties to Atoka Agreement.—[29]. This agreement, by and between the government of the United States,

¹ *Hayes v. Barringer*, 168 Fed. 221, 93 C. C. A. 507; *Morris v. Hitchcock*, 194 U. S. 384, 24 Sup. Ct. 712, 48 L. Ed. 1030; *United States v. Choctaw Nation*, 193 U. S. 115, 24 Sup. Ct. 411, 48 L. Ed. 640; *In re Joins*, 191 U. S. 93, 24 Sup. Ct. 27, 48 L. Ed. 110; *Stephens v. Cherokee Nation*, 174 U. S. 445, 19 Sup. Ct. 722, 43 L. Ed. 1041.

of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Cabaniss, and Alexander B. Montgomery, duly appointed and authorized thereunto, and the governments of the Choctaw and Chickasaw Tribes or Nations of Indians in the Indian Territory, respectively, of the second part, entered into in behalf of such Choctaw and Chickasaw governments, duly appointed and authorized thereunto, viz: Green McCurtain, J. S. Standley, N. B. Ainsworth, Ben Hampton, Wesley Anderson, Amos Henry, D. C. Garland, and A. S. Williams, in behalf of the Choctaw Tribe or Nation, and R. M. Harris, I. O. Lewis, Holmes Colbert, P. S. Mosely, M. V. Cheadle, R. L. Murray, William Perry, A. H. Colbert, and R. L. Boyd, in behalf of the Chickasaw Tribe or Nation.

ALLOTMENT OF LANDS

Witnesseth, that in consideration of the mutual undertakings, herein contained, it is agreed as follows:

§ 499. Allotment to Choctaws and Chickasaws.—[29]. That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes so as to give to each member of these tribes so far as possible a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

That all the lands set apart for townsites, and the strip of land lying between the city of Fort Smith, Arkansas, and the Arkansas and Poteau rivers, extending up said river to the mouth of Mill creek; and six hundred and forty acres each, to include the buildings now occupied by the Jones Academy, Tushkahoma Female Seminary, Wheelock Orphan Seminary, and Armstrong Orphan Academy, and ten acres for the capitol building of the Choctaw Nation;

one hundred and sixty acres each, immediately contiguous to and including the buildings known as Bloomfield Academy, Lebanon Orphan Home, Harley Institute, Rock Academy, and Collins Institute, and five acres for the capitol building in the Chickasaw Nation, and the use of one acre of land for each church house now erected outside of the towns, and eighty acres of land each for J. S. Murrow, H. R. Schermerhorn, and the widow of R. S. Bell, who have been laboring as missionaries in the Choctaw and Chickasaw Nations since the year eighteen hundred and sixty-six, with the same conditions and limitations as apply to lands allotted to the members of the Choctaw and Chickasaw Nations, and to be located on lands not occupied by a Choctaw or a Chickasaw, and a reasonable amount of land, to be determined by the townsite commission, to include all court-houses and jails and other public buildings not hereinbefore provided for, shall be exempted from division.²

§ 500. Coal and asphalt reservation.—[29]. And all coal and asphalt in or under the lands allotted and reserved from allotment shall be reserved for the sole use of the members of the Choctaw and Chickasaw Tribes, exclusive of freedmen: Provided, that where any coal or asphalt is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land by the lessee or party operating the same, before operations begin. That in order to such equal division, the lands of the Choctaws and Chickasaws shall be graded and appraised so as to give to each member, so far as pos-

² *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Hendrix v. United States*, 219 U. S. 79, 31 Sup. Ct. 193, 55 L. Ed. 102; *Ballinger v. United States ex rel. Frost*, 216 U. S. 240, 30 Sup. Ct. 338, 54 L. Ed. 464.

sible, an equal value of the land: Provided further, that the Commission to the Five Civilized Tribes shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw Tribes and their descendants born to them since the date of said treaty, and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined, in such manner as shall hereafter be provided by act of Congress.

§ 501. Choctaw and Chickasaw freedmen.—[29]. That the lands allotted to the Choctaw and Chickasaw freedmen are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw and Chickasaw Tribes so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same.

§ 502. Choctaw and Chickasaw freedmen, allotment to.—[29]. That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of forty acres each shall be entitled each to land equal in value to forty acres of the average land of the two nations.

§ 503. Appraisement for allotment purposes.—[29]. That in the appraisement of the lands to be allotted the Choctaw and Chickasaw Tribes shall each have a representative, to be appointed by their respective executives, to co-operate with the Commission to the Five Civilized Tribes, or any one making appraisements under the direction of the Secretary of the Interior in grading and appraising the lands preparatory to allotment. And the land shall be valued in the appraisement as if in its original condition, excluding the improvements thereon.

That the appraisement and allotment shall be made under the direction of the Secretary of the Interior, and shall

begin as soon as the progress of the surveys, now being made by the United States government, will admit.

§ 504. **Preference right to select allotment.**—[29]. That each member of the Choctaw and Chickasaw Tribes, including Choctaw and Chickasaw freedmen, shall, where it is possible, have the right to take his allotment on land, the improvements on which belong to him, and such improvements shall not be estimated in the value of his allotment. In the case of minor children, allotments shall be selected for them by their father, mother, guardian, or the administrator having charge of their estate, preference being given in the order named, and shall not be sold during his minority. Allotments shall be selected for prisoners, convicts, and incompetents by some suitable person akin to them, and due care taken that all persons entitled thereto have allotments made to them.

§ 505. **Alienation of allotted lands.**—[29]. All the lands allotted shall be nontaxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent, and each allottee shall select from his allotment a homestead of one hundred and sixty acres, for which he shall have a separate patent, and which shall be inalienable for twenty-one years from date of patent. This provision shall also apply to the Choctaw and Chickasaw freedman to the extent of his allotment. Selections for homesteads for minors to be made as provided herein in case of allotment, and the remainder of the lands allotted to said members shall be alienable for a price to be actually paid, and to include no former indebtedness or obligation—one-fourth of said remainder in one year, one-fourth in three years, and the balance of said alienable lands in five years from the date of the patent.

§ 506. **Contracts, violation of agreement.**—[29]. That all contracts looking to the sale or incumbrance in any way

of the land of an allottee, except the sale hereinbefore provided, shall be null and void. No allottee shall lease his allotment, or any portion thereof, for a longer period than five years, and then without the privilege of renewal. Every lease which is not evidenced by writing, setting out specifically the terms thereof, or which is not recorded in the clerk's office of the United States court for the district in which the land is located, within three months after the date of its execution, shall be void, and the purchaser or lessee shall acquire no rights whatever by an entry or holding thereunder. And no such lease or any sale shall be valid as against the allottee unless providing to him a reasonable compensation for the lands sold or leased.

§ 507. Jurisdiction conferred upon Commission.—[29]. That all controversies arising between the members of said tribes as to their right to have certain lands allotted to them shall be settled by the commission making the allotments.

That the United States shall put each allottee in possession of his allotment and remove all persons therefrom objectionable to the allottee.

That the United States shall survey and definitely mark and locate the ninety-eighth (98th) meridian of west longitude between Red and Canadian rivers before allotment of the lands herein provided for shall begin.

MEMBERS' TITLES TO LANDS

§ 508. Title to allotted lands.—[29]. That, as soon as practicable after the completion of said allotments, the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall jointly execute, under their hands and the seals of the respective nations, and deliver to each of the said allottees patents conveying to him all

the right, title, and interest of the Choctaws and Chickasaws in and to the land which shall have been allotted to him in conformity with the requirements of this agreement, excepting all coal and asphalt in or under said land. Said patents shall be framed in accordance with the provisions of this agreement, and shall embrace the land allotted to such patentee and no other land, and the acceptance of his patents by such allottee shall be operative as an assent on his part to the allotment and conveyance of all the lands of the Choctaws and Chickasaws in accordance with the provisions of this agreement, and as a relinquishment of all his right, title, and interest in and to any and all parts thereof, except the land embraced in said patents, except also his interest in the proceeds of all lands, coal, and asphalt herein excepted from allotment.

That the United States shall provide by law for proper records of land titles in the territory occupied by the Choctaw and Chickasaw Tribes.

RAILROADS

§ 509. **Railroads.**—[29]. The rights of way for railroads through the Choctaw and Chickasaw Nations to be surveyed and set apart and platted to conform to the respective acts of Congress granting the same in cases where said rights of way are defined by such acts of Congress, but in cases where the acts of Congress do not define the same then Congress is memorialized to definitely fix the width of said rights of way for station grounds and between stations, so that railroads now constructed through said nations shall have, as near as possible, uniform rights of way; and Congress is also requested to fix uniform rates of fare and freight for all railroads through the Choctaw and Chickasaw Nations; branch railroads now constructed and not built according to acts of Congress to pay the same rates for rights of way and station grounds as main lines.

TOWNSITES

§ 510. Townsites.—[29]. It is further agreed that there shall be appointed a commission for each of the two nations. Each commission shall consist of one member, to be appointed by the executive of the tribe for which said commission is to act, who shall not be interested in town property other than his home, and one to be appointed by the President of the United States. Each of said commissions shall lay out townsites, to be restricted as far as possible to their present limits, where towns are now located in the nation for which said commission is appointed. Said commission shall have prepared correct and proper plats of each town, and file one in the clerk's office of the United States district court for the district in which the town is located, and one with the principal chief or governor of the nation in which the town is located, and one with the Secretary of the Interior, [to] be approved by him before the same shall take effect. When said towns are so laid out, each lot on which permanent, substantial, and valuable improvements, other than fences, tillage, and temporary houses, have been made, shall be valued by the commission provided for the nation in which the town is located at the price a fee-simple title to the same would bring in the market at the time the valuation is made, but not to include in such value the improvements thereon. The owner of the improvements on each lot shall have the right to buy one residence and one business lot at fifty per centum of the appraised value of such improved property, and the remainder of such improved property at sixty-two and one-half per centum of the said market value within sixty days from date of notice served on him that such lot is for sale, and if he purchases the same he shall, within ten days from his purchase, pay into the treasury of the United States one-fourth of the purchase price, and the balance in three equal annual installments, and when the entire sum is paid shall

be entitled to a patent for the same. In case the two members of the commission fail to agree as to the market value of any lot, or the limit or extent of said town, either of said commissioners may report any such disagreement to the judge of the district in which such town is located, who shall appoint a third member to act with said commission, who is not interested in town lots, who shall act with them to determine said value.

If such owner of the improvements on any lot fails within sixty days to purchase and make the first payment on same, such lot, with the improvements thereon, shall be sold at public auction to the highest bidder, under the direction of the aforesaid commission, and the purchaser at such sale shall pay to the owner of the improvements the price for which said lot shall be sold, less sixty-two and one-half per cent. of said appraised value of the lot, and shall pay the sixty-two and one-half per cent. of said appraised value into the United States treasury, under regulations to be established by the Secretary of the Interior, in four installments, as hereinbefore provided. The commission shall have the right to reject any bid on such lot which they consider below its value.

All lots not so appraised shall be sold from time to time at public auction (after proper advertisement) by the commission for the nation in which the town is located, as may seem for the best interest of the nations and the proper development of each town, the purchase price to be paid in four installments as hereinbefore provided for improved lots. The commission shall have the right to reject any bid for such lots which they consider below its value.

All the payments herein provided for shall be made under the direction of the Secretary of the Interior into the United States treasury, a failure of sixty days to make any one payment to be a forfeiture of all payments made and all rights under the contract: Provided, that the purchaser

of any lot shall have the option of paying the entire price of the lot before the same is due.

No tax shall be assessed by any town government against any town lot unsold by the commission, and no tax levied against a lot sold, as herein provided, shall constitute a lien on same till the purchase price thereof has been fully paid to the nation.

The money paid into the United States treasury for the sale of all town lots shall be for the benefit of the members of the Choctaw and Chickasaw Tribes (freedmen excepted), and at the end of one year from the ratification of this agreement, and at the end of each year thereafter, the funds so accumulated shall be divided and paid to the Choctaws and Chickasaws (freedmen excepted), each member of the two tribes to receive an equal portion thereof.

That no law or ordinance shall be passed by any town which interferes with the enforcement of or is in conflict with the laws of the United States in force in said territory, and all persons in such towns shall be subject to said laws, and the United States agrees to maintain strict laws in the territory of the Choctaw and Chickasaw Tribes against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality.

§ 511. **Cemeteries, churches, etc.**—[29]. That said commission shall be authorized to locate, within a suitable distance from each townsite, not to exceed five acres to be used as a cemetery, and when any town has paid into the United States treasury, to be part of the fund arising from the sale of town lots, ten dollars per acre therefor, such town shall be entitled to a patent for the same as herein provided for titles to allottees, and shall dispose of same at reasonable prices in suitable lots for burial purposes, the proceeds derived from such sales to be applied by the town government to the proper improvement and care of said cemetery.

That no charge or claim shall be made against the Choctaw or Chickasaw Tribes by the United States for the expenses of surveying and platting the lands and townsites, or for grading, appraising, and allotting the lands, or for appraising and disposing of the town lots as herein provided.

That the land adjacent to Fort Smith and lands for courthouses, jails, and other public purposes, excepted from allotment shall be disposed of in the same manner and for the same purposes as provided for town lots herein, but not till the Choctaw and Chickasaw Councils shall direct such disposition to be made thereof, and said land adjacent thereto shall be placed under the jurisdiction of the city of Fort Smith, Arkansas, for police purposes.

There shall be set apart and exempted from appraisal and sale in the towns, lots upon which churches and parsonages are now built and occupied, not to exceed fifty feet front and one hundred feet deep for each church or parsonage: Provided, that such lots shall only be used for churches and parsonages, and when they cease to be used shall revert to the members of the tribes to be disposed of as other town lots: Provided further, that these lots may be sold by the churches for which they are set apart if the purchase money therefor is invested in other lot or lots in the same town, to be used for the same purpose and with the same conditions and limitations.

§ 512. Coal and asphalt lands reserved.—[29]. It is agreed that all the coal and asphalt within the limits of the Choctaw and Chickasaw Nations shall remain and be the common property of the members of the Choctaw and Chickasaw Tribes (freedmen excepted), so that each and every member shall have an equal and undivided interest in the whole; and no patent provided for in this agreement shall convey any title thereto. The revenues from coal and asphalt, or so much as shall be necessary, shall be used for the education of the children of Indian blood

of the members of said tribes. Such coal and asphalt mines as are now in operation, and all others which may hereafter be leased and operated, shall be under the supervision and control of two trustees, who shall be appointed by the President of the United States, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, whose term shall be for four years, and one on the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, whose term shall be for two years; after which the term of appointees shall be four years. Said trustees, or either of them, may, at any time, be removed by the President of the United States for good cause shown. They shall each give bond for the faithful performance of their duties, under such rules as may be prescribed by the Secretary of the Interior. Their salaries shall be fixed and paid by their respective nations, each of whom shall make full report of all his acts to the Secretary of the Interior quarterly. All such acts shall be subject to the approval of said Secretary.

All coal and asphalt mines in the two nations, whether now developed or to be hereafter developed, shall be operated, and the royalties therefrom paid into the treasury of the United States, and shall be drawn therefrom under such rules and regulations as shall be prescribed by the Secretary of the Interior.

All contracts made by the national agents of the Choctaw and Chickasaw Nations for operating coal and asphalt, with any person or corporation, which were, on April twenty-third, eighteen hundred and ninety-seven, being operated in good faith are hereby ratified and confirmed, and the lessee shall have the right to renew the same when they expire, subject to all the provisions of this act.

All agreements heretofore made by any person or corporation with any member or members of the Choctaw or Chickasaw Nations, the object of which was to obtain such member or members' permission to operate coal or asphalt,

are hereby declared void: Provided, that nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any oil, coal rights, asphalt, or mineral which have been assented to by act of Congress, but all such interests shall continue unimpaired hereby and shall be assured by new leases from such trustees of coal or asphalt claims described therein, by application to the trustees within six months after the ratification of this agreement, subject, however, to payment of advance royalties herein provided for.

All leases under this agreement shall include the coal or asphaltum, or other mineral, as the case may be, in or under nine hundred and sixty acres, which shall be in a square as nearly as possible, and shall be for thirty years. The royalty on coal shall be fifteen cents per ton of two thousand pounds on all coal mined, payable on the 25th day of the month next succeeding that in which it is mined. Royalty on asphalt shall be sixty cents per ton, payable same as coal: Provided, that the Secretary of the Interior may reduce or advance royalties on coal and asphalt when he deems it for the best interests of the Choctaws and Chickasaws to do so. No royalties shall be paid except into the United States treasury as herein provided.

All lessees shall pay on each coal or asphalt claim at the rate of one hundred dollars per annum, in advance, for the first and second years; two hundred dollars per annum, in advance, for the third and fourth years; and five hundred dollars for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine is developed and operated, and its production is in excess of such guaranteed annual advance payments, and all persons having coal leases must pay said annual advanced payments on each claim whether developed or undeveloped: Provided, however, that should any lessee neglect or refuse to pay such advanced annual

royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance thereon shall become and be the money and property of the Choctaw and Chickasaw Nations.

In surface, the use of which is reserved to present coal operators, shall be included such lots in towns as are occupied by lessees' houses—either occupied by said lessees' employés, or as offices or warehouses: Provided, however, that in those townsites designated and laid out under the provision of this agreement where coal leases are now being operated and coal is being mined, there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the townsite board of appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines, and a sufficient amount for all buildings and machinery for mining purposes: And provided further, that when the lessees shall cease to operate said mines, then and in that event the lots of land so reserved shall be disposed of by the coal trustees for the benefit of the Choctaw and Chickasaw Tribes.

That whenever the members of the Choctaw and Chickasaw Tribes shall be required to pay taxes for the support of schools, then the fund arising from such royalties shall be disposed of for the equal benefit of their members (freedmen excepted) in such manner as the tribes may direct.

§ 513. Jurisdiction conferred upon United States courts.—[29]. It is further agreed that the United States courts now existing, or that may hereafter be created, in the Indian Territory shall have exclusive jurisdiction of all controversies growing out of the titles, ownership, occupation, possession, or use of real estate, coal and asphalt in the territory occupied by the Choctaw and Chickasaw Tribes;

and of all persons charged with homicide, embezzlement, bribery, and embracery, breaches, or disturbances of the peace, and carrying weapons, hereafter committed in the territory of said tribes, without reference to race or citizenship of the person or persons charged with such crime; and any citizen or officer of the Choctaw or Chickasaw Nations charged with such crime shall be tried, and, if convicted, punished as though he were a citizen or officer of the United States.

And sections sixteen hundred and thirty-six to sixteen hundred and forty-four, inclusive, entitled "Embezzlement," and sections seventeen hundred and eleven to seventeen hundred and eighteen, inclusive, entitled "Bribery and Embracery," of Mansfield's Digest of the Laws of Arkansas, are hereby extended over and put in force in the Choctaw and Chickasaw Nations; and the word "officer," where the same appears in said laws, shall include all officers of the Choctaw and Chickasaw governments; and the fifteenth section of the act of Congress, entitled "An act to establish United States courts in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine, limiting jurors to citizens of the United States, shall be held not to apply to United States courts in the Indian Territory held within the limits of the Choctaw and Chickasaw Nations; and all members of the Choctaw and Chickasaw Tribes, otherwise qualified, shall be competent jurors in said courts: Provided, that whenever a member of the Choctaw and Chickasaw Nations is indicted for homicide, he may, within thirty days after such indictment and his arrest thereon, and before the same is reached for trial, file with the clerk of the court in which he is indicted, his affidavit that he cannot get a fair trial in said court; and it thereupon shall be the duty of the judge of said court to order a change of venue in such case to the United States District Court for the Western District of Arkansas, at Fort Smith, Arkansas, or to the United

States District Court for the Eastern District of Texas, at Paris, Texas, always selecting the court that in his judgment is nearest or most convenient to the place where the crime charged in the indictment is supposed to have been committed, which courts shall have jurisdiction to try the case; and in all said civil suits said courts shall have full equity powers; and whenever it shall appear to said court, at any stage in the hearing of any case, that the tribe is in any way interested in the subject-matter in controversy, it shall have power to summon in said tribe and make the same a party to the suit and proceed therein in all respects as if such tribe were an original party thereto; but in no case shall suit be instituted against the tribal government without its consent.

§ 514. Acts of Indian Council to be approved by President.—[29]. It is further agreed that no act, ordinance, or resolution of the council of either the Choctaw or Chickasaw Tribes, in any manner affecting the land of the tribe, or of the individuals, after allotment, or the moneys or other property of the tribe or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), or the rights of any persons to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States. When such acts, ordinances, or resolutions passed by the council of either of said tribes shall be approved by the governor thereof then it shall be the duty of the national secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances, or resolutions, when so approved, shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby, and when

disapproved shall be returned to the tribe enacting the same.

§ 515. **Tribal governments to continue for eight years.**—[29]. It is further agreed, in view of the modification of legislative authority and judicial jurisdiction herein provided, and the necessity of the continuance of the tribal governments so modified, in order to carry out the requirements of this agreement, that the same shall continue for the period of eight years from the fourth day of March, eighteen hundred and ninety-eight. This stipulation is made in the belief that the tribal governments so modified will prove so satisfactory that there will be no need or desire for further change till the lands now occupied by the Five Civilized Tribes shall, in the opinion of Congress, be prepared for admission as a state to the Union. But this provision shall not be construed to be in any respect an abdication by Congress of power at any time to make needful rules and regulations respecting said tribes.

§ 516. **Per capita payments.**—[29]. That all per capita payments hereafter made to the members of the Choctaw or Chickasaw Nations shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account for such disbursements to said Secretary.

That the following sum be, and is hereby, appropriated, out of any money in the treasury not otherwise appropriated, for fulfilling treaty stipulations with the Chickasaw Nation of Indians, namely:

For arrears of interest, at five per centum per annum, from December thirty-first, eighteen hundred and forty, to June thirtieth, eighteen hundred and eighty-nine, on one hundred and eighty-four thousand one hundred and forty-three dollars and nine cents of the trust fund of the Chickasaw Nation erroneously dropped from the books of the United States prior to December thirty-first, eighteen hun-

dred and forty and restored December twenty-seventh, eighteen hundred and eighty-seven, by the award of the Secretary of the Interior, under the fourth article of the treaty of June twenty-second, eighteen hundred and fifty-two, and for arrears of interest at five per centum per annum, from March eleventh, eighteen hundred and fifty, to March third, eighteen hundred and ninety, on fifty-six thousand and twenty-one dollars and forty-nine cents of the trust fund of the Chickasaw Nation erroneously dropped from the books of the United States March eleventh, eighteen hundred and fifty, and restored December twenty-seventh, eighteen hundred and eighty-seven, by the award of the Secretary of the Interior, under the fourth article of the treaty of June twenty-second, eighteen hundred and fifty-two, five hundred and fifty-eight thousand five hundred and twenty dollars and fifty-four cents, to be placed to the credit of the Chickasaw Nation with the fund to which it properly belongs: Provided, that if there be any attorneys' fees to be paid out of the same, on contract heretofore made and duly approved by the Secretary of the Interior, the same is authorized to be paid by him.

§ 517. **Controversy with other tribes.**—[29]. It is further agreed that the final decision of the courts of the United States in the case of the Choctaw Nation and the Chickasaw Nation against the United States and the Wichita and affiliated bands of Indians, now pending, when made, shall be conclusive as the basis of settlement as between the United States and said Choctaw and Chickasaw Nations for the remaining lands in what is known as the "Leased District," namely, the land lying between the ninety-eighth and one hundredth degrees of west longitude and between the Red and Canadian rivers, leased to the United States by the treaty of eighteen hundred and fifty-five, except that portion called the Cheyenne and Arapahoe country, heretofore acquired by the United States, and all final judgments rendered against said nations in any of the courts of the

United States in favor of the United States or any citizen thereof shall first be paid out of any sum hereafter found due said Indians for any interest they may have in the so-called leased district.

§ 518. Choctaws and Chickasaws to become citizens of the United States.—[29]. It is further agreed that all of the funds invested, in lieu of investment, treaty funds, or otherwise, now held by the United States in trust for the Choctaw and Chickasaw Tribes, shall be capitalized within one year after the tribal governments shall cease, so far as the same may legally be done, and be appropriated and paid, by some officer of the United States appointed for the purpose, to the Choctaws and Chickasaws (freedmen excepted) per capita, to aid and assist them in improving their homes and lands.

It is further agreed that the Choctaws and Chickasaws, when their tribal governments cease, shall become possessed of all the rights and privileges of citizens of the United States.

ORPHAN LANDS

§ 519. Orphan lands in Mississippi.—[29]. It is further agreed that the Choctaw orphan lands in the state of Mississippi, yet unsold, shall be taken by the United States at one dollar and twenty-five cents (\$1.25) per acre, and the proceeds placed to the credit of the Choctaw orphan fund in the treasury of the United States, the number of acres to be determined by the General Land Office.

In witness whereof the said commissioners do hereunto affix their names at Atoka, Indian Territory, this the twenty-third day of April, eighteen hundred and ninety-seven.⁸

⁸ Signatures omitted.

CHAPTER 45

CHOCTAW-CHICKASAW SUPPLEMENTAL AGREEMENT (CHAP- TER 1362, 32 STAT. 641) AND CERTAIN SPECIAL LEGISLATION APPLICABLE TO CHOC- TAW AND CHICKASAWS

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§ 520. Preamble to Supplemental Agreement.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the

following agreement, made by the Commission to the Five Civilized Tribes with the commissions representing the Choctaw and Chickasaw Tribes of Indians on the twenty-first day of March, nineteen hundred and two, be, and the same is hereby, ratified and confirmed, to wit:

AGREEMENT BETWEEN THE UNITED STATES AND THE CHOCTAWS AND CHICKASAWS

This agreement, by and between the United States, entered into in its behalf by Henry L. Dawes, Tams Bixby, Thomas B. Needles, and Clifton R. Breckenridge, commissioners duly appointed and authorized thereunto, and the Choctaw and Chickasaw Tribes of Indians in Indian Territory, respectively, entered into in behalf of such Choctaw and Chickasaw Tribes, by Gilbert W. Dukes, Green McCurtain, Thomas E. Sanguin, and Simon E. Lewis in behalf of the Choctaw Tribe of Indians; and Douglas H. Johnston, Calvin J. Grant, Holmes Willis, Edward B. Johnson, and Benjamin H. Colbert in behalf of the Chickasaw Tribe of Indians, commissioners duly appointed and authorized thereunto—

Witnesseth that, in consideration of the mutual undertakings herein contained, it is agreed as follows:

DEFINITIONS

§ 521. Definition—"Nations"—"Tribes."—[1]. Wherever used in this agreement the words "nations" and "tribes" shall each be held to mean the Choctaw and Chickasaw Nations or Tribes of Indians in Indian Territory.

§ 522. Definition—"Chief executives."—[2]. The word "chief executives" shall be held to mean the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation.

§ 523. Definition—"Member"—"Citizen."— [3]. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Choctaw

or Chickasaw Tribe of Indians in Indian Territory, not including freedmen.

§ 524. **Definition—"Atoka Agreement."**—[4]. The term "Atoka Agreement" shall be held to mean the agreement made by the Commission to the Five Civilized Tribes with the Commissioners representing the Choctaw and Chickasaw Tribes of Indians at Atoka, Indian Territory, and embodied in the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight. (30 Stat. 495.)

§ 525. **Definition—"Minor."**—[5]. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.

§ 526. **Definition—"Select."**—[6]. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Commission to the Five Civilized Tribes for the Choctaw and Chickasaw Nations, for particular tracts of land.

§ 527. **Masculine includes feminine, and singular includes plural.**—[7]. Every word in this agreement importing the masculine gender may extend and be applied to females as well as males, and the use of the plural may include also the singular, and vice versa.

§ 528. **Allottable lands.**—[8]. The terms "allottable lands" or "lands allottable" shall be deemed to mean all the lands of the Choctaw and Chickasaw Tribes not herein reserved from allotment.

APPRAISEMENT OF LANDS

§ 529. **Appraisement of lands.**—[9]. All the lands belonging to the Choctaw and Chickasaw Tribes in the Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: Provided, that in determining such value consideration shall not be given to the location thereof, to any mineral deposits, or to

any timber except such pine timber as may have been heretofore estimated by the Commission to the Five Civilized Tribes, and without reference to improvements which may be located thereon.

§ 530. **Appraisement of lands.**—[10]. The appraisement as herein provided shall be made by the Commission to the Five Civilized Tribes, and the Choctaw and Chickasaw Tribes shall each have a representative to be appointed by the respective executives to co-operate with the said Commission.

ALLOTMENT OF LANDS

§ 531. **Allotment of lands.**—[11]. There shall be allotted to each member of the Choctaw and Chickasaw Tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw Nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw Nations; to conform, as nearly as may be, to the areas and boundaries established by the government survey, which land may be selected by each allottee so as to include his improvements. For the purpose of making allotments and designating homesteads hereunder, the forty-acre or quarter-quarter subdivisions established by the government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.¹

§ 532. **Homestead inalienable during lifetime of allottee.**—[12]. Each member of said tribes shall, at the time

¹ In re Joins, 191 U. S. 93, 24 Sup. Ct. 27, 48 L. Ed. 110; Mullen v. United States, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

of the selection of his allotment, designate as a homestead out of said allotment land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and separate certificate and patent shall issue for said homestead.²

§ 533. Allotment of freedmen inalienable during lifetime of allottee.—[13]. The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment.³

§ 534. Disposition of surplus tribal lands.—[14]. When allotments as herein provided have been made to all citizens and freedmen, the residue of lands not herein reserved or otherwise disposed of, if any there be, shall be sold at public auction under rules and regulations and on terms to be prescribed by the Secretary of the Interior, and so much of the proceeds as may be necessary for equalizing allotments shall be used for that purpose, and the balance shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws and distributed per capita as other funds of the tribes.⁴

§ 535. Allotted lands—Restrictions on.—[15]. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be

² *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Hayes v. Barringer*, 168 Fed. 221, 93 C. C. A. 507; *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Hoteyabi v. Vaughn*, 32 Okl. 807, 124 Pac. 63.

³ *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811.

⁴ *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547; *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811.

alienated under this act, nor shall said lands be sold except as herein provided.⁵

§ 536. Surplus allotments—Alienation of permitted.—[16]. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: Provided, that such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value.⁶

§ 537. Allotments—How selected.—[17]. If, for any reason, an allotment should not be selected or a homestead designated by, or on behalf of, any member or freedman, it shall be the duty of said Commission to make said selection and designation.

§ 538. Procedure in making allotments.—[18]. In the making of allotments and in the designation of homesteads for members of said tribes, under the provisions of this agreement, said Commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in paragraph eleven hereof.

§ 539. Excessive holdings prohibited.—[19]. It shall be unlawful after ninety days after the date of the final ratification of this agreement for any member of the Choctaw

⁵ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Hayes v. Barringer*, 168 Fed. 221, 93 C. C. A. 507; *Frame v. Bivens* (C. C.) 189 Fed. 785; *Taylor v. Anderson* (C. C.) 197 Fed. 383; *Williams v. Johnson*, 32 Okl. 247, 122 Pac. 485; *In re Davis' Estate*, 32 Okl. 209, 122 Pac. 547; *Redwine v. Ansley*, 32 Okl. 317, 122 Pac. 679; *Harper v. Kelly*, 29 Okl. 809, 120 Pac. 293; *Howard v. Farrar*, 28 Okl. 490, 114 Pac. 695; *Simmons v. Whittington*, 27 Okl. 356, 112 Pac. 1018; *Lewis v. Clements*, 21 Okl. 167, 95 Pac. 769; *Taylor v. Parker*, 33 Okl. 199, 126 Pac. 573; *Keel v. Ingersoll*, 27 Okl. 117, 111 Pac. 214.

⁶ *In re Lands Five Civilized Tribes* (D. C.) 199 Fed. 811; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738. See note to preceding section.

or Chickasaw Tribes to enclose or hold possession of in any manner, by himself or through another, directly or indirectly, more lands in value than that of three hundred and twenty acres of average allottable lands of the Choctaw and Chickasaw Nations, as provided by the terms of this agreement, either for himself or for his wife, or for each of his minor children if members of said tribes; and any member of said tribes found in such possession of lands, or having the same in any manner enclosed after the expiration of ninety days after the date of the final ratification of this agreement, shall be deemed guilty of a misdemeanor.

§ 540. **Excessive holdings prohibited.**—[20]. It shall be unlawful after ninety days after the date of the final ratification of this agreement for any Choctaw or Chickasaw freedman to enclose or hold possession of in any manner, by himself or through another, directly or indirectly, more than so much land as shall be equal in value to forty acres of the average allottable lands of the Choctaw and Chickasaw Tribes as provided by the terms of this agreement, either for himself or for his wife, or for each of his minor children, if they be Choctaw or Chickasaw freedmen; and any freedman found in such possession of lands, or having the same in any manner enclosed after the expiration of ninety days after the date of the final ratification of this agreement, shall be deemed guilty of a misdemeanor.

§ 541. **Excessive holding—Penalty for.**—[21]. Any person convicted of violating any of the provisions of sections 19 and 20 of this agreement shall be punished by a fine not less than one hundred dollars, and shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs) and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist, shall be deemed a separate offense. And the United States district attorneys for the districts in which said nations are situated are required to see that the provisions of

said sections are strictly enforced, and they shall immediately after the expiration of ninety days after the date of the final ratification of this agreement proceed to dispossess all persons of such excessive holdings of lands, and to prosecute them for so unlawfully holding the same. And the Commission to the Five Civilized Tribes shall have authority to make investigation of all violations of sections 19 and 20 of this agreement, and make report thereon to the United States district attorneys.

§ 542. Persons living September 25, 1902, but who die before selection entitled to allotments.—[22]. If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment of land the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: Provided, that the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and practicable time, the Commission to the Five Civilized Tribes shall designate the lands thus to be allotted.⁷

§ 543. Allotment certificates conclusive evidence of title.—[23]. Allotment certificates issued by the Commission to the Five Civilized Tribes shall be conclusive evidence of the right of any allottee to the tract of land described therein; and the United States Indian agent at the Union Agen-

⁷ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *In re Lands Five Civilized Tribes* (D. C.) 199 Fed. 811; *Hancock v. Mutual Trust Co.*, 24 Okl. 391, 103 Pac. 566; *Hoteyabi v. Vaughn*, 32 Okl. 807, 124 Pac. 63.

cy shall, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to such allottee and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.⁸

§ 544. Commission's jurisdiction in allotment controversies.—[24]. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine, under the direction of the Secretary of the Interior, all matters relating to the allotment of land.⁹

EXCESSIVE HOLDINGS

§ 545. Excessive holdings — How determined. — [25]. After the opening of a land office for allotment purposes in both the Choctaw and the Chickasaw Nations any citizen or freedman of either of said nations may appear before the Commission to the Five Civilized Tribes at the land office in the nation in which his land is located and make application for his allotment and for allotments for members of his family and for other persons for whom he is lawfully authorized to apply for allotments, including homesteads, and after the expiration of ninety days following the opening of such land offices any such applicant may make allegation that the land or any part of the land that he desires to have allotted is held by another citizen or person in excess of the amount of land to which said citizen or person is lawfully entitled, and that he desires to have said land allotted to him or members of his family as herein provided; and thereupon said Commission shall serve notice upon the person so alleged to be holding land

⁸ *Ballinger v. United States ex rel. Frost*, 216 U. S. 241, 30 Sup. Ct. 338, 54 L. Ed. 464; *Wallace v. Adams*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547; *Wallace v. Adams*, 143 Fed. 716, 74 C. C. A. 540; *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249, 29 Sup. Ct. 62, 53 L. Ed. 168; *Bowen v. Ledbetter*, 32 Okl. 513, 122 Pac. 131; *Sorrels v. Jones*, 26 Okl. 569, 110 Pac. 743.

⁹ See authorities cited under last section.

in excess of the lawful amount to which he may be entitled, said notice to set forth the facts alleged and the name and post-office address of the person alleging the same, and the rights and consequences herein provided, and the person so alleged to be holding land contrary to law shall be allowed thirty days from the date of the service of said notice in which to appear at one of said land offices and to select his allotment and the allotments he may be lawfully authorized to select, including homesteads; and if at the end of the thirty days last provided for the person upon whom said notice has been served has not selected his allotment and allotments as provided, then the Commission to the Five Civilized Tribes shall immediately make or reserve said allotments for the person or persons who have failed to act in accordance with the notice aforesaid, having due regard for the best interest of said allottees; and after such allotments have been made or reserved by said Commission, then all other lands held or claimed, or previously held or claimed by said person or persons, shall be deemed a part of the public domain of the Choctaw and Chickasaw Nations and be subject to disposition as such: Provided, that any persons who have previously applied for any part of said lands shall have a prior right of allotment of the same in the order of their applications and as their lawful rights may appear.

If any citizen or freedman of the Choctaw and Chickasaw Nations shall not have selected his allotment within twelve months after the date of the opening of said land offices in said nations, if not herein otherwise provided, and provided that twelve months shall have elapsed from the date of the approval of his enrollment by the Secretary of the Interior, then the Commission to the Five Civilized Tribes may immediately proceed to select an allotment, including a homestead for such person, said allotment and homestead to be selected as the Commission may deem for the best interest of said person, and the same shall be of the same force and effect as if such selection had been made

by such citizen or freedman in person, and all lands held or claimed by persons for whom allotments have been selected by the Commission as provided, and in excess of the amount included in said allotments, shall be a part of the public domain of the Choctaw and Chickasaw Nations and be subject to disposition as such.

RESERVATIONS

§ 546. Reservations.—[26]. The following land shall be reserved from the allotment of lands herein provided for:

(a) All lands set apart for townsites either by the terms of the Atoka Agreement, the act of Congress of May 31, 1900 (31 Stats. 221), as herein assented to, or by the terms of this agreement.

(b) All lands to which, at the date of the final ratification of this agreement, any railroad company may under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses connected with the maintenance and operation of the railroad.

(c) The strip of land lying between the city of Fort Smith, Arkansas, and the Arkansas and Poteau rivers, extending up the said Poteau river to the mouth of Mill creek.

(d) All lands which shall be segregated and reserved by the Secretary of the Interior on account of their coal or asphalt deposits, as hereinafter provided. And the lands selected by the Secretary of the Interior at and in the vicinity of Sulphur in the Chickasaw Nation, under the cession to the United States hereunder made by said tribes.

(e) One hundred and sixty acres for Jones Academy.

(f) One hundred and sixty acres for Tuskahoma Female Seminary.

(g) One hundred and sixty acres for Wheelock Orphan Seminary.

(h) One hundred and sixty acres for Armstrong Orphan Academy.

(i) Five acres for capitol building of the Choctaw Nation.

(j) One hundred and sixty acres for Bloomfield Academy.

(k) One hundred and sixty acres for Lebanon Orphan Home.

(l) One hundred and sixty acres for Harley Institute..

(m) One hundred and sixty acres for Rock Academy.

(n) One hundred and sixty acres for Collins Institute.

(o) Five acres for the capitol building of the Chickasaw Nation.

(p) Eighty acres for J. S. Murrow.

(q) Eighty acres for H. R. Schermerhorn.

(r) Eighty acres for the widow of R. S. Bell.

(s) A reasonable amount of land, to be determined by the townsite commissioners, to include all tribal court-houses and jails and other tribal public buildings.

(t) Five acres for any cemetery located by the townsite commissioners prior to the date of the final ratification of this agreement.

(u) One acre for any church under the control of and used exclusively by the Choctaw or Chickasaw citizens at the date of the final ratification of this agreement.

(v) One acre each for all Choctaw or Chickasaw schools under the supervision of the authorities of the Choctaw or Chickasaw Nations and officials of the United States.

And the acre so reserved for any church or school in any quarter section of land shall be located when practicable in a corner of such quarter section lying adjacent to the section line thereof.

ROLLS OF CITIZENSHIP

§ 547. **Rolls of citizenship.**—[27]. The rolls of the Choctaw and Chickasaw citizens and the Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes, in strict compliance with the act of Congress approved June 28, 1898 (30 Stats. 495), and the

act of Congress approved May 31, 1900 (31 Stats. 221), except as herein otherwise provided: Provided, that no person claiming right to enrollment and allotment and distribution of tribal property, by virtue of a judgment of the United States court in the Indian Territory under the act of June 10, 1896 (29 Stats. 321), and which right is contested by legal proceedings instituted under the provisions of this agreement, shall be enrolled or receive allotment of lands or distribution of tribal property until his right thereto has been finally determined.

§ 548. Rolls of citizenship—Continued.—[28]. The names of all persons living on the date of the final ratification of this agreement entitled to be enrolled as provided in section 27 hereof shall be placed upon the rolls made by said Commission; and no child born thereafter to a citizen or freedman and no person intermarried thereafter to a citizen shall be entitled to enrollment or to participate in the distribution of the tribal property of the Choctaws and Chickasaws.

§ 549. Freedmen not to be enrolled as citizens.—[29]. No person whose name appears upon the rolls made by the Commission to the Five Civilized Tribes as a citizen or freedman of any other tribe shall be enrolled as a citizen or freedman of the Choctaw or Chickasaw Nations.¹⁰

§ 550. Membership rolls—When final.—[30]. For the purpose of expediting the enrollment of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen, the said Commission shall, from time to time, and as early as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment.

¹⁰ *Ikard v. Minter*, 4 Ind. T. 214, 69 S. W. 852; *Ansley v. Ainsworth*, 4 Ind. T. 308, 69 S. W. 884; *Zevely v. Welmer*, 5 Ind. T. 646, 82 S. W. 941; *Welmer v. Zevely*, 138 Fed. 1006, 70 C. C. A. 683; *Sayer v. Brown*, 7 Ind. T. 675, 104 S. W. 877; *Chapman v. Siler*, 30 Okl. 714, 120 Pac. 608.

The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final rolls of citizens of the Choctaw and Chickasaw Tribes and of Choctaw and Chickasaw freedmen, upon which allotment of land and distribution of other tribal property shall be made as herein provided. Lists shall be made up and forwarded when contests of whatever character shall have been determined, and when there shall have been submitted to and approved by the Secretary of the Interior lists embracing names of all those lawfully entitled to enrollment, the rolls shall be deemed complete. The rolls so prepared shall be made in quintuplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Choctaw Nation, one with the governor of the Chickasaw Nation, and one to remain with the Commission to the Five Civilized Tribes.¹¹

§ 551. **Citizenship court created.**—[31]. It being claimed and insisted by the Choctaw and Chickasaw Nations that the United States courts in the Indian Territory, acting under the Act of Congress approved June 10, 1896, have admitted persons to citizenship or to enrollment as such citizens in the Choctaw and Chickasaw Nations, respectively, without notice of the proceedings in such courts being given to each of said nations; and it being insisted by said nations that, in such proceedings, notice to each of said nations was indispensable, and it being claimed and insisted by said nations that the proceedings in the United States courts in the Indian Territory, under the said Act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such Commission, and should not have extended to a trial de novo of the ques-

¹¹ *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249, 29 Sup. Ct. 62, 53 L. Ed. 168; *In re Joins*, 191 U. S. 93, 24 Sup. Ct. 27, 48 L. Ed. 110; *Wallace v. Adams*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547.

tion of citizenship; and it being desirable to finally determine these questions, the two nations, jointly, or either of said nations acting separately and making the other a party defendant, may, within 90 days after this agreement becomes effective, by a bill in equity filed in the Choctaw and Chickasaw citizenship court hereinafter named, seek the annulment and vacation of all such decisions by said courts. Ten persons so admitted to citizenship or enrollment by said courts, with notice to one but not to both of said nations, shall be made defendants to said suit as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Notice of the institution of said suit shall be personally served upon the chief executive of the defendant nation, if either nation be made a party defendant as aforesaid, and upon each of said ten representative defendants, and shall also be published for a period of four weeks in at least two weekly newspapers having general circulation in the Choctaw and Chickasaw Nations. Such notice shall set forth the nature and prayer of the bill, with the time for answering the same, which shall not be less than thirty days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the next section. In the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated shall, upon written application

therefor, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having custody and control of such files, papers and proceedings, and, upon the filing in such citizenship court of the files, papers and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein.¹²

§ 552. **Citizenship court—Jurisdiction.**—[32]. Said citizenship court shall also have appellate jurisdiction over all judgments of the courts in Indian Territory rendered under said Act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment as citizens in either of said nations. The right of appeal may be exercised by the said nations jointly or by either of them acting separately at any time within six months after this agreement is finally ratified. In the exercise of such appellate jurisdiction said citizenship court shall be authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, wherever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking

¹² See next preceding section and authorities cited.

additional evidence therein. Such citizenship court shall also have like appellate jurisdiction and authority over judgments rendered by such courts under the said act denying claims to citizenship or to enrollment as citizens in either of said nations. Such appeals shall be taken within the time hereinbefore specified and shall be taken, conducted and disposed of in the same manner as appeals by the said nations, save that notice of appeals by citizenship claimants shall be served upon the chief executive officer of both nations: Provided, that paragraphs thirty-one, thirty-two and thirty-three hereof shall go into effect immediately after the passage of this act by Congress.

§ 553. **Citizenship court—Procedure in.**—[33]. A court is hereby created to be known as the Choctaw and Chickasaw citizenship court, the existence of which shall terminate upon the final determination of the suits and proceedings named in the last two preceding sections, but in no event later than the thirty-first day of December, nineteen hundred and three. Said court shall have all authority and power necessary to the hearing and determination of the suits and proceedings so committed to its jurisdiction, including the authority to issue and enforce all requisite writs, process and orders, and to prescribe rules and regulations for the transaction of its business. It shall also have all the powers of a circuit court of the United States in compelling the production of books, papers and documents, the attendance of witnesses, and in punishing contempt. Except where herein otherwise expressly provided, the pleadings, practice and proceedings in said court shall conform, as near as may be, to the pleadings, practice and proceedings in equity causes in the circuit courts of the United States. The testimony shall be taken in court or before one of the judges, so far as practicable. Each judge shall be authorized to grant, in vacation or recess, interlocutory orders and to hear and dispose of interlocutory motions not affecting the substantial merits of the case.

Said court shall have a chief judge and two associate judges, a clerk, a stenographer, who shall be deputy clerk, and a bailiff. The judges shall be appointed by the President, by and with the advice and consent of the Senate, and shall each receive a compensation of five thousand dollars per annum, and his necessary and actual traveling and personal expenses while engaged in the performance of his duties. The clerk, stenographer, and bailiff shall be appointed by the judges, or a majority of them, and shall receive the following yearly compensation: Clerk, two thousand four hundred dollars; stenographer, twelve hundred dollars; bailiff, nine hundred dollars. The compensation of all these officers shall be paid by the United States in monthly installments. The moneys to pay said compensation are hereby appropriated, and there is also hereby appropriated the sum of five thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior, to pay such contingent expenses of said court and its officers as to such Secretary may seem proper. Said court shall have a seal, shall sit at such place or places in the Choctaw and Chickasaw Nations as the judges may designate, and shall hold public sessions, beginning the first Monday in each month, so far as may be practicable or necessary. Each judge and the clerk and deputy clerk shall be authorized to administer oaths. All writs and process issued by said court shall be served by the United States marshal for the district in which the service is to be had. The fees for serving process and the fees of witnesses shall be paid by the party at whose instance such process is issued or such witnesses are subpoenaed, and the rate or amount of such fees shall be the same as is allowed in civil causes in the Circuit Court of the United States for the Western District of Arkansas. No fees shall be charged by the clerk or other officers of said court. The clerk of the United States court in Indian Territory, having custody and control of the files, papers, and proceedings in the

original citizenship cases, shall receive a fee of two dollars and fifty cents for transferring and certifying to the citizenship court the files, papers, and proceedings in each case, without regard to the number of persons whose citizenship is involved therein, and said fee shall be paid by the person applying for such transfer and certification. The judgment of the citizenship court in any or all of the suits or proceedings so committed to its jurisdiction shall be final. All expenses necessary to the proper conduct, on behalf of the nations, of the suits and proceedings provided for in this and the two preceding sections shall be incurred under the direction of the executives of the two nations, and the Secretary of the Interior is hereby authorized, upon certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said nations in the treasury of the United States.¹⁸

§ 554. Closing rolls.—[34]. During the ninety days first following the date of the final ratification of this agreement, the Commission to the Five Civilized Tribes may receive applications for enrollment only of persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said Commission, commonly known as “delinquents,” and such intermarried white persons as may have married recognized citizens of the Choctaw and Chickasaw Nations in accordance with the tribal laws, customs and usages on or before the date of the passage of this act by Congress, and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement; but the application of no person whomsoever for enrollment shall be received after the expiration of the said ninety days: Provided, that nothing in this section shall apply to any person or persons making application for enrollment as

¹⁸ See authorities cited to section 551.

Mississippi Choctaws, for whom provision has herein otherwise been made.

§ 555. **Enrolled members—When entitled to allotment.**—[35]. No person whose name does not appear upon the rolls prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Choctaw and Chickasaw tribes and those whose names appear thereon shall participate in the manner set forth in this agreement: Provided, that no allotment of land or other tribal property shall be made to any person, or to the heirs of any person whose name is on the said rolls, and who died prior to the date of the final ratification of this agreement. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before the date of the final ratification of this agreement, and any person or persons who may conceal the death of any one on said rolls as aforesaid, for the purpose of profiting by the said concealment, and who shall knowingly receive any portion of any land or other tribal property, or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto, a forfeiture to the Choctaw and Chickasaw nations of the lands, other tribal property, and proceeds so obtained.

CHICKASAW FREEDMEN

§ 556. **Chickasaw freedmen—Authority conferred on Court of Claims to determine controversy.**—[36]. Authority is hereby conferred upon the Court of Claims to determine the existing controversy respecting the relations of the Chickasaw freedmen to the Chickasaw Nation and

the rights of such freedmen in the lands of the Choctaw and Chickasaw Nations under the third article of the treaty of eighteen hundred and sixty-six, between the United States and the Choctaw and Chickasaw Nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

§ 557. **Bill to be filed by Attorney General.**—[37]. To that end the Attorney General of the United States is hereby directed, on behalf of the United States, to file in said Court of Claims, within sixty days after this agreement becomes effective, a bill of interpleader against the Choctaw and Chickasaw Nations and the Chickasaw freedmen, setting forth the existing controversy between the Chickasaw Nation and the Chickasaw freedmen and praying that the defendants thereto be required to interplead and settle their respective rights in such suit.

§ 558. **Procedure in freedmen suits.**—[38]. Service of process in the suit may be had on the Choctaw and Chickasaw Nations, respectively, by serving upon the principal chief of the former and the governor of the latter a certified copy of the bill, with a notice of the time for answering the same, which shall not be less than thirty nor more than sixty days after such service, and may be had upon the Chickasaw freedmen by serving upon each of three known and recognized Chickasaw freedmen a certified copy of the bill, with a like notice of the time for answering the same, and by publishing a notice of the commencement of the suit, setting forth the nature and prayer of the bill, with the time for answering the same, for a period of three weeks in at least two weekly newspapers having general circulation in the Chickasaw Nation.

§ 559. **Choctaw and Chickasaw Nations may intervene in freedmen suits.**—[39]. The Choctaw and Chickasaw Nations, respectively, may in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes, employ

counsel to represent them in such suit and protect their interests therein; and the Secretary of the Interior shall employ competent counsel to represent the Chickasaw freedmen in said suit and to protect their interests therein; and the compensation of counsel so employed for the Chickasaw freedmen, including all costs of printing their briefs and other incidental expenses on their part, not exceeding six thousand dollars, shall be paid out of the Treasury of the United States upon certificate of the Secretary of the Interior setting forth the employment and the terms thereof, and stating that the required services have been duly rendered; and any party feeling aggrieved at the decree of the Court of Claims, or any part thereof, may, within sixty days after the rendition thereof, appeal to the Supreme Court, and in each of said courts the suit shall be advanced for hearing and decision at the earliest practicable time.

§ 560. **Temporary allotments to Choctaw and Chickasaw freedmen.**—[40]. In the meantime the Commission to the Five Civilized Tribes shall make a roll of the Chickasaw freedmen and their descendants, as provided in the Atoka Agreement, and shall make allotments to them as provided in this agreement, which said allotments shall be held by the said Chickasaw freedmen, not as temporary allotments, but as final allotments, and in the event that it shall be finally determined in said suit that the Chickasaw freedmen are not, independently of this agreement, entitled to allotments in the Choctaw and Chickasaw lands, the Court of Claims shall render a decree in favor of the Choctaw and Chickasaw Nations according to their respective interests, and against the United States, for the value of the lands so allotted to the Chickasaw freedmen as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment, which decree shall take the place of the said lands and shall be in full satisfaction of all claims by the Choctaw and Chickasaw Nations against the United States or the said freedmen on account

of the taking of the said lands for allotment to said freedmen: Provided, that nothing contained in this paragraph shall be construed to effect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation therefor, as aforesaid.

MISSISSIPPI CHOCTAWS

• § 561—Mississippi Choctaws.—[41]. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the Act of Congress approved June 28, 1898 (30 Stats. 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such Commission within one year after the date of their said identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians whether of full or mixed blood who received a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be

deemed to be Mississippi Choctaws, entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation, all of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

§ 562. Mississippi Choctaws—Allotments upon condition.—[42]. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka Agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations.¹⁴

§ 563. Mississippi Choctaws — Enrollments of. — [43]. Applications for enrollment as Mississippi Choctaws, and applications to have land set apart to them as such, must be made personally before the Commission to the Five Civilized Tribes. Fathers may apply for their minor children; and if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound mind may be made by duly appointed guardian or curator, and for aged and infirm persons and prisoners by agents duly authorized there-

¹⁴ Hoteyabl v. Vaughn, 32 Okl. 807, 124 Pac. 63.

unto by power of attorney, in the discretion of said Commission.

§ 564. **Mississippi Choctaws—Proof of continuous residence.**—[44]. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw Tribes, and distributed per capita with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser.

TOWNSITES

§ 565. **Townsites.**—[45]. The Choctaw and Chickasaw Tribes hereby assent to the Act of Congress approved May 31, 1900 (31 Stats. 221), in so far as it pertains to townsites in the Choctaw and Chickasaw Nations, ratifying and confirming all acts of the government of the United States thereunder, and consent to a continuance of the provisions of said act not in conflict with the terms of this agreement.¹⁵

§ 566. **Townsites—Acreage may be added.**—[46]. As to those townsites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, as provided in said Act of Congress of May 31, 1900, such additional acreage may be add-

¹⁵ *Ballinger v. United States ex rel. Frost*, 216 U. S. 240, 30 Sup. Ct. 338, 54 L. Ed. 464.

ed thereto, in like manner as the original townsite was set apart, as may be necessary for the present needs and reasonable prospective growth of said townsites, the total acreage not to exceed six hundred and forty acres for each townsite.

§ 567. Townsites—Sufficient land for present and prospective growth.—[47]. The lands which may hereafter be set aside and reserved for townsites upon the recommendation of the Commission to the Five Civilized Tribes, under the provisions of said Act of May 31, 1900, shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such townsites, not to exceed six hundred and forty acres for each townsite.

§ 568. Townsites—Compensation to owner of improvements.—[48]. Whenever any tract of land shall be set aside for townsite purposes, as provided in said Act of May 31, 1900, or by the terms of this agreement, which is occupied by any member of the Choctaw or Chickasaw Nations, such occupant shall be fully compensated for his improvements thereon out of the funds of the tribes arising from the sale of townsites, under rules and regulations to be prescribed by the Secretary of the Interior, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe in which the townsite is located, and one by the occupant of the land, said board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriation for surveying, laying out, platting, and selling townsites.

§ 569. Townsites—Provisions for vesting title.—[49]. Whenever the chief executive of the Choctaw or Chickasaw Nation fails or refuses to appoint a townsite commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the townsite commissioner appointed by the

chief executive of the Choctaw or Chickasaw Nation to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

§ 570. Townsites—Additional commissions authorized.—[50]. There shall be appointed, in the manner provided in the Atoka Agreement, such additional townsite commissions as the Secretary of the Interior may deem necessary, for the speedy disposal of all townsites in said nations: Provided, that the jurisdiction of said additional townsite commissions shall extend to such townsites only as shall be designated by the Secretary of the Interior.

§ 571. Townsites—Patents to purchasers.—[51]. Upon the payment of the full amount of the purchase price of any lot in any townsite in the Choctaw and Chickasaw Nations, appraised and sold as herein provided, or sold as herein provided, the chief executives of said nations shall jointly execute, under their hands and the seals of the respective nations and deliver to the purchaser of the said lot, a patent conveying to him all right, title, and interest of the Choctaw and Chickasaw Tribes in and to said lot.

§ 572. Townsites—Deeds to lots.—[52]. All town lots in any one townsite to be conveyed to one person shall, as far as practicable, be included in one patent, and all patents shall be executed free of charge to the grantee.

§ 573. Towns of two hundred population or less.—[53]. Such towns in the Choctaw and Chickasaw Nations as may have a population of less than two hundred people, not otherwise provided for, and which in the judgment of the Secretary of the Interior should be set aside as townsites, shall have their limits defined not later than ninety days after the final ratification of this agreement, in the same manner as herein provided for other townsites; but in no such case shall more than forty acres of land be set aside for any such townsite.

§ 574. **Government—Survey of townsites confirmed.**— [54]. All townsites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the Act of Congress approved May 31, 1900 (31 Stat. 221), with the additional acreage added thereto, and all townsites which may hereafter be set aside, as well as all townsites set aside under the provisions of this agreement having a population of less than two hundred, shall be surveyed, laid out, platted, appraised, and disposed of in a like manner, and with like preference rights accorded to owners of improvements as other townsites in the Choctaw and Chickasaw Nations are surveyed, laid out, platted, appraised, and disposed of under the Atoka Agreement, as modified or supplemented by the said Act of May 31, 1900: Provided, that occupants or purchasers of lots in townsites in said Choctaw and Chickasaw Nations upon which no improvements have been made prior to the passage of this act by Congress shall pay the full appraised value of said lots instead of the percentage named in the Atoka Agreement.

MUNICIPAL CORPORATIONS

§ 575. **Municipal corporations.** — [55]. Authority is hereby conferred upon municipal corporations in the Choctaw and Chickasaw Nations, with the approval of the Secretary of the Interior, to issue bonds and borrow money thereon for sanitary purposes and for the construction of sewers, lighting plants, waterworks, and schoolhouses, subject to all the provisions of laws of the United States in force in the organized territories of the United States in reference to municipal indebtedness and issuance of bonds for public purposes; and said provisions of law are hereby put in force in said nations and made applicable to the cities and towns therein the same as if specially enacted in reference thereto; and said municipal corporations are hereby authorized to vacate streets and alleys, or parts thereof, and said

streets and alleys, when so vacated, shall become the property of the adjacent property holders.

COAL AND ASPHALT

§ 576. **Coal and asphalt.**—[56]. At the expiration of two years after the final ratification of this agreement all deposits of coal and asphalt which are in lands within the limits of any townsite established under the Atoka Agreement, or the Act of Congress of May 31, 1900, or this agreement, and which are within the exterior limits of any lands reserved from allotment on account of their coal or asphalt deposits, as herein provided, and which are not at the time of the final ratification of this agreement embraced in any then existing coal or asphalt lease, shall be sold at public auction for cash under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as herein provided respecting the proceeds of the sale of coal and asphalt lands.

§ 577. **Coal and asphalt within townsite limits.**—[57]. All coal and asphalt deposits which are within the limits of any townsite so established, which are at the date of the final ratification of this agreement covered by any existing lease, shall, at the expiration of two years after the final ratification of this agreement, be sold at public auction under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as provided in the last preceding section. The coal or asphalt covered by each lease shall be separately sold. The purchaser shall take such coal or asphalt deposits subject to the existing lease, and shall by the purchase succeed to all the rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribe shall be retained by them.

§ 578. **Segregation of coal and asphalt.**—[58]. Within six months after the final ratification of this agreement the Secretary of the Interior shall ascertain, so far as may be

practicable, what lands are principally valuable because of their deposits of coal or asphalt, including therein all lands which at the time of the final ratification of this agreement shall be covered by then existing coal or asphalt leases, and within that time he shall, by a written order, segregate and reserve from allotment all of said lands. Such segregation and reservation shall conform to the subdivisions of the government survey as nearly as may be, and the total segregation and reservation shall not exceed five hundred thousand acres. No lands so reserved shall be allotted to any member of freedmen, and the improvements of any member or freedmen existing upon any of the lands so segregated and reserved at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and shall be paid for out of any common funds of the two tribes in the treasury of the United States, upon the order of the Secretary of the Interior. All coal and asphalt deposits, as well as other minerals which may be found in any lands not so segregated and reserved, shall be deemed a part of the land and shall pass to the allottee or other person who may lawfully acquire title to such lands.

§ 579. Segregated lands to be sold.—[59]. All lands segregated and reserved under the last preceding section, excepting those embraced within the limits of a townsite established as hereinbefore provided, shall, within three years from the final ratification of this agreement and before the dissolution of the tribal governments, be sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one on the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood. Either of said commissioners may, at any time, be removed by the President for good cause shown.

Each of said commissioners shall be paid at the rate of four thousand dollars per annum, the Choctaw commissioner to be paid by the Choctaw Nation, the Chickasaw commissioner to be paid by the Chickasaw Nation, and the third commissioner to be paid by the United States. In the sale of coal and asphalt lands and coal and asphalt deposits hereunder, the commission shall have the right to reject any or all bids which it considers below the value of any such lands or deposits. The proceeds arising from the sale of coal and asphalt lands and coal and asphalt deposits shall be deposited in the Treasury of the United States to the credit of said tribes and paid out per capita to the members of said tribes (freedmen excepted) with the other moneys belonging to said tribes, in the manner provided by law. The lands embraced within any coal or asphalt lease shall be separately sold, subject to such lease, and the purchaser shall succeed to all the rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribes shall be retained by them. The lands so segregated and reserved, and not included within any existing coal or asphalt lease, shall be sold in tracts not exceeding in area a section under the government survey.

§ 580. Segregated lands to be sold—Continued.—[60]. Upon the recommendation of the chief executive of each of the two tribes, and where in the judgment of the President it is advantageous to the tribes so to do, the sale of any coal or asphalt lands which are herein directed to be sold may be made at any time after the expiration of six months from the final ratification of this agreement, without awaiting the expiration of the period of two years, as hereinbefore provided.

§ 581. Leasing coal and asphalt lands.—[61]. No lease of any coal or asphalt lands shall be made after the final ratification of this agreement, the provisions of the Atoka Agreement to the contrary notwithstanding.

§ 582. **Sale of coal and asphalt lands.**—[62]. Where any lands so as aforesaid segregated and reserved on account of their coal or asphalt deposits are in this agreement specifically reserved from allotment for any other reason, the sale to be made hereunder shall be only of the coal and asphalt deposits contained therein, and in all other respects the other specified reservation of such lands herein provided for shall be fully respected.

§ 583. **Patents to purchasers of coal and asphalt lands.**—[63]. The chief executives of the two tribes shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser of any coal or asphalt lands so sold, and to each purchaser of any coal or asphalt deposits so sold, an appropriate patent or instrument of conveyance, conveying to the purchaser the property so sold.

SULPHUR SPRINGS

§ 584. **Sulphur springs.**—[64]. The two tribes hereby absolutely and unqualifiedly relinquish, cede, and convey unto the United States a tract or tracts of land at and in the vicinity of the village of Sulphur, in the Chickasaw Nation, of not exceeding six hundred and forty acres, to be selected, under the direction of the Secretary of the Interior, within four months after the final ratification of this agreement, and to embrace all the natural springs in and about said village, and so much of Sulphur creek, Rock creek, Buckhorn creek, and the lands adjacent to said natural springs and creeks as may be deemed necessary by the Secretary of the Interior for the proper utilization and control of said springs and the waters of said creeks, which lands shall be so selected as to cause the least interference with the contemplated townsite at that place consistent with the purposes for which said cession is made, and when selected the ceded lands shall be held, owned, and controlled by the United States absolutely and without any restriction, save that no part thereof shall be platted or disposed of for town-

site purposes during the existence of the two tribal governments. Such other lands as may be embraced in a townsite at that point shall be disposed of in the manner provided in the Atoka Agreement for the disposition of townsites. Within ninety days after the selection of the lands so ceded there shall be deposited in the treasury of the United States, to the credit of the two tribes, from the unappropriated public moneys of the United States, twenty dollars per acre for each acre so selected, which shall be in full compensation for the lands so ceded, and such moneys shall, upon the dissolution of the tribal governments, be divided per capita among the members of the tribes, freedmen excepted, as are other funds of the tribes. All improvements upon the lands so selected which were lawfully there at the time of the ratification of this agreement by Congress shall be appraised, under the direction of the Secretary of the Interior, at the true value thereof at the time of the selection of said lands, and shall be paid for by warrants drawn by the Secretary of the Interior upon the treasurer of the United States. Until otherwise provided by law, the Secretary of the Interior may, under rules prescribed for that purpose, regulate and control the use of the water of said springs and creeks and the temporary use and occupation of the lands so ceded. No person shall occupy any portion of the lands so ceded, or carry on any business thereon, except as provided in said rules, and until otherwise provided by Congress the laws of the United States relating to the introduction, possession, sale, and giving away of liquors or intoxicants of any kind within the Indian country or Indian reservations shall be applicable to the lands so ceded, and said lands shall remain within the jurisdiction of the United States court for the Southern district of Indian Territory: Provided, however, that nothing contained in this section shall be construed or held to commit the government of the United States to any expenditure of money upon said lands or the improvements thereof, except as provided herein, it being the intention of this provision that in the future the lands

and improvements herein mentioned shall be conveyed by the United States to such territorial or state organization as may exist at the time when such conveyance is made.

MISCELLANEOUS

§ 585. Patents, acceptance of for minors, etc.—[65]. The acceptance of patents for minors, prisoners, convicts, and incompetents by persons authorized to select their allotments for them shall be sufficient to bind such minors, prisoners, convicts, and incompetents as to the conveyance of all other lands of the tribes.

§ 586. Patents to allotments—Recording and delivery.—[66]. All patents to allotments of land, when executed, shall be recorded in the office of the Commission to the Five Civilized Tribes within said nations in books appropriate for the purpose, until such time as Congress shall make other suitable provision for record of land titles as provided in the Atoka Agreement, without expense to the grantee; and such records shall have like effect as other public records.

§ 587. Certain provisions inapplicable to Choctaws and Chickasaws.—[67]. The provisions of section three of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (30 Stats. 495), shall not apply to or in any manner affect the lands or other property of the Choctaws and Chickasaws or Choctaw and Chickasaw freedmen.

§ 588. Conflict with previous acts.—[68]. No act of Congress or treaty provision, nor any provision of the Atoka Agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw Nations.¹⁶

§ 589. Allotment controversies—How determined.—[69]. All controversies arising between members as to

¹⁶ Taylor v. Anderson (C. C.) 197 Fed. 383.

their right to select particular tracts of land shall be determined by the Commission to the Five Civilized Tribes.

§ 590. Parents to select allotments for minors.—[70]. Allotments may be selected and homesteads designated for minors by the father or mother, if members, or by a guardian or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable person akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

§ 591. No contest after nine months.—[71]. After the expiration of nine months after the date of the original selection of an allotment, by or for any citizen or freedman of the Choctaw or Chickasaw Tribes, as provided in this agreement, no contest shall be instituted against such selection.¹⁷

§ 592. Per capita payment authorized.—[72]. There shall be paid to each citizen of the Chickasaw Nation, immediately after the approval of his enrollment and right to participate in distribution of tribal property, as herein provided, the sum of forty dollars. Such payment shall be made under the direction of the Secretary of the Interior, and out of the balance of the "arrears of interest" of five hundred and fifty-eight thousand five hundred and twenty dollars and fifty-four cents appropriated by the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," yet due to the Chickasaws and remaining to their credit in the treasury of the United States; and so much of such moneys as may be necessary for such payment are hereby appropriated and made available for that purpose, and the bal-

¹⁷ *Frame v. Bivens* (C. C.) 189 Fed. 785.

ance, if any there be, shall remain in the treasury of the United States, and be distributed per capita with the other funds of the tribes. And all acts of Congress or other treaty provisions in conflict with this provision are hereby repealed.

§ 593. **Provisions for ratification.**—[73]. This agreement shall be binding upon the United States and upon the Choctaw and Chickasaw Nations and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw Tribes in the manner following: The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall, within one hundred and twenty days after the ratification of this agreement by Congress, make public proclamation that the same shall be voted upon at any special election to be held for that purpose within thirty days thereafter, on a certain day therein named; and all male citizens of each of the said tribes qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement be ratified by said tribes as aforesaid, the date upon which said election is held shall be deemed to be the date of final ratification.

§ 594. **Canvass of votes.**—[74]. The votes cast in both the Choctaw and Chickasaw Nations shall be forthwith returned and duly certified by the precinct officers to the national secretaries of said tribes, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and the national secretary of the Choctaw Nation and the governor and national secretary of the Chickasaw Nation and two members of the Commission to the Five Civilized Tribes; and said board shall meet without delay at Atoka, Indian Territory, and canvass and count said votes, and make proclamation of the result.

In witness whereof the said commissioners do hereby affix

their names at Washington, District of Columbia, this twenty-first day of March, 1902.

Approved July 1, 1902. Ratified by Choctaws and Chickasaws September 25, 1902.

§ 595. Allotment to Mississippi Choctaws provided for in Choctaw and Chickasaw Nations.—Provided, that any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment.¹⁸

§ 596. Contracts affecting lands of Mississippi Choctaws prohibited.—Provided further, that all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void.¹⁹

§ 597. Enrollment of Mississippi Choctaw full bloods.—No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March fourth, nineteen hundred and six, and who shall furnish proof thereof.²⁰

§ 597a. Provision of Act of May 29, 1908, for additional townsites.—[7]. That in addition to the towns heretofore segregated, surveyed, and scheduled in accordance with law, the Secretary of the Interior be, and he is hereby, authorized to segregate and survey within that part of the

¹⁸ Act May 31, 1900, c. 598, 31 Stat. 236.

¹⁹ 31 Stat. 237.

²⁰ Act June 21, 1906, c. 3504, 34 Stat. 341.

Territory of the Choctaw and Chickasaw Nations, state of Oklahoma, heretofore segregated as coal and asphalt land, such other towns, parts of towns, or town lots, as are now in existence, or which he may deem it desirable to establish. He shall cause the surface of the lots in such towns or parts of towns to be appraised, scheduled, and sold at the rates, on the terms, and with the same character of estate as is provided in section twenty-nine of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes at Large, page four hundred and ninety-five), under regulations to be prescribed by him. That the provisions of section thirteen of the Act of Congress approved April twenty-sixth nineteen hundred and six (Thirty-Fourth Statutes at Large, page one hundred and thirty-seven), shall not apply to town lots appraised and sold as provided herein. That all expenses incurred in surveying, platting, and selling the lots in any town or parts of towns shall be paid from the proceeds of the sale of town lots of the nation in which such town is situate.²¹

§ 597b. Reappraisement of the town of Hartshorne ordered by Act of May 29, 1908.—[14]. That the Secretary of the Interior is hereby authorized to make, and shall cause to be made, within sixty days from the passage of this act, a reappraisement of the town of Hartshorne, Oklahoma, as of the date of the original appraisement made by the townsite commission; that payment already made on lots therein shall be credited on the basis of the reappraisement; that there shall be reimbursed to lot owners for the townsite funds of the Choctaw and Chickasaw Nations any amounts paid by them in excess of the new appraisement, and that the first installment on the purchase price or of the balance remaining unpaid shall be due thirty days after the service of notice of reappraisement, but in all other respects the existing laws relating to the sale of town lots and issue of pat-

²¹ 35 Stat. 446, c. 216.

ents therefor in the Choctaw and Chickasaw Nations shall remain in full force and effect.²²

§ 597c. Jurisdiction conferred upon Court of Claims to hold and determine certain demands against the Choctaw and Chickasaw freedmen.—[16]. That jurisdiction is hereby conferred upon the Court of Claims, with right of appeal to the Supreme Court, to hear and determine the claims of Robert V. Belt, of Washington, District of Columbia, and Joseph P. Mullen, formerly of Fort Smith, Arkansas, now of Ardmore, Oklahoma, for services rendered and expenses incurred by them as the attorneys for the Choctaw and Chickasaw freedmen, in the prosecution of their claims for allotments of land within and of the domain of the Choctaw and Chickasaw Nations of Indians, now in the state of Oklahoma.

That the suits in said cases shall be begun by filing petitions in the Court of Claims within sixty days after the approval of this act, wherein shall be set out such facts and in the manner as prescribed by the rules of that court, by the said Robert V. Belt and Joseph P. Mullen, against the Choctaw freedmen in the one case and against the Chickasaw freedmen in the other case; service of said petitions shall be had by delivery of two copies of each to the Attorney General, who, with such attorney as said freedmen may select and employ, shall appear and defend for all of the defendants in each of said cases.

That the court may receive and consider all papers, documents, records, depositions, or other evidence offered by any of the parties to said suits; and for such amount, if any, as the court shall adjudge to be justly and equitably due to said attorneys, Robert V. Belt and Joseph P. Mullen, as the value of the services rendered and expenses incurred by them for and on behalf of the said Choctaw and Chickasaw freedmen upon the evidence submitted it shall render judgment or decree against the individuals to whom such

²² 35 Stat. 448, c. 216

services were rendered, the same to be a lien against their respective allotments of land for their pro rata amounts thereof.²³

§ 597d. Jurisdiction conferred upon the Court of Claims to adjudicate certain demands against the Mississippi Choctaws.—[27]. That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the Act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles F. Winton, deceased: Provided, that the evidence of the intervenors shall be immediately submitted: And provided further, that the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws.²⁴

²³ 35 Stat. 451, c. 216.

²⁴ 35 Stat. 457, c. 216.

CHAPTER 46

AN ACT TO PROVIDE FOR THE SALE OF SURFACE OF THE SEGREGATED COAL AND ASPHALT LANDS OF THE CHOCTAW AND CHICKASAW NATIONS, AND FOR OTHER PURPOSE (CHAPTER 46, 37 STAT. 67), AND AMENDMENT THERETO (CHAPTER 388, 37 STAT. 531)

- § 598. Surface land—Appraisal—Definition of what consists of.
- 599. Preference right to purchase.
- 600. Sale of surface subject to right of lessees to mine.
- 601. Surface lands unsold at expiration of two years to be sold to highest bidder.
- 602. Regulation of terms and conditions of sale.
- 603. Upon approval of mineral trustees and appraisers sale may include coal and asphalt as well as surface.
- 604. Conveyances to purchasers.
- 605. Appropriation for conducting work.
- 606. Secretary authorized to prescribe rules and regulations.
- 607. Amendment to Segregated Land Act contained in the Indian Appropriation Bill of August 24, 1912.

§ 598. Surface land—Appraisal—Definition of what consists of.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of the Interior is hereby authorized to sell at not less than the appraised price, to be fixed as hereinafter provided, the surface, leased and unleased, of the lands of the Choctaw and Chickasaw Nations in Oklahoma segregated and reserved by order of the Secretary of the Interior dated March twenty-fourth, nineteen hundred and three, authorized by the Act approved July first, nineteen hundred and two. The surface herein referred to shall include the entire state save the coal and asphalt reserved. Before offering such surface for sale the Secretary of the Interior, under such regulations as he may prescribe, shall cause the same to be classified and appraised by three appraisers, to be appointed by the President, at a compensation to be fixed by him, not to exceed for salary and expenses for each appraiser the sum of fifteen dollars per day for the time actually engaged in making

such classification and appraisement. The classification and appraisement of the surface shall be by tracts, according to the government survey of said lands, except that lands which are especially valuable by reason of proximity to towns or cities may, in the discretion of the Secretary of the Interior, be subdivided into lots or tracts containing not less than one acre. In appraising said surface the value of any improvements thereon belonging to the Choctaw and Chickasaw Nations, except such improvements as have been placed on coal or asphalt lands leased for mining purposes, shall be taken into consideration. The surface shall be classified as agricultural, grazing, or as suitable for town lots. The classification and appraisement provided for herein shall be completed within six months from the date of the passage of this act, shall be sworn to by the appraisers, and shall become effective when approved by the Secretary of the Interior: Provided, that in the proceedings and deliberation of said appraisers in the process of said appraisement and in the approval thereof the Choctaw and Chickasaw Nations may present for consideration facts, figures, and arguments bearing upon the value of said property.

§ 599. Preference right to purchase.—[2]. That after such classification and appraisement has been made each holder of a coal or asphalt lease shall have a right for sixty days, after notice in writing, to purchase, at the appraised value and upon the terms and conditions hereinafter prescribed, a sufficient amount of the surface of the land covered by his lease to embrace improvements actually used in present mining operations or necessary for future operations up to five per centum of such surface, the number, location, and extent of the tracts to be thus purchased to be approved by the Secretary of the Interior: Provided, that the Secretary of the Interior may, in his discretion, enlarge the amount of land to be purchased by any such lessee to not more than ten per centum of such surface: Provided

further, that such purchase shall be taken and held as a waiver by the purchaser of any and all rights to appropriate to his use any other part of the surface of such land, except for the purpose of future operations, prospecting, and for ingress and egress, as hereinafter reserved: Provided further, that if any lessee shall fail to apply to purchase under the provisions of this section within the time specified the Secretary of the Interior may, in his discretion, with the consent of the lessee, designate and reserve from sale such tract or tracts as he may deem proper and necessary to embrace improvements actually used in present mining operations, or necessary for future operations, under any existing lease, and dispose of the remaining portion of the surface within such lease free and clear of any claim by the lessee, except for the purposes of future operations, prospecting, and for ingress and egress, as hereinafter reserved.

§ 600. **Sale of surface subject to right of lessees to mine.**—[3]. That sales of the surface under this act shall be upon the conditions that the Choctaw and Chickasaw Nations, their grantees, lessees, assigns, or successors, shall have the right at all times to enter upon said lands for the purpose of prospecting for coal or asphalt thereon, and also the right of underground ingress and egress, without compensation to the surface owner, and upon the further condition that said nations, their grantees, lessees, assigns, or successors, shall have the right to acquire such portions of the surface of any tract, tracts, or rights thereto as may be reasonably necessary for prospecting or for the conduct of mining operations or for the removal of deposits of coal and asphalt upon paying a fair valuation for the portion of the surface so acquired. If the owner of the surface and the then owner or lessee of such mineral deposits shall be unable to agree upon a fair valuation for the surface so acquired, such valuation shall be determined by three arbitrators, one to be appointed, in writing, a copy to be served on the other party by the owner of the surface, one in like

manner by the owner or lessee of the mineral deposits, and the third to be chosen by the two so appointed; and in case the two arbitrators so appointed should be unable to agree upon a third arbitrator within thirty days, then and in that event, upon the application of either interested party, the United States district judge in the district within which said land is located shall appoint the third arbitrator: Provided, that the owner of such mineral deposits or lessee thereof shall have the right of entry upon the surface so to be acquired for mining purposes immediately after the failure of the parties to agree upon a fair valuation and the appointment, as above provided, of an arbitrator by the said owner or lessee.

§ 601. Surface lands unsold at expiration of two years to be sold to highest bidder.—[4]. That upon the expiration of two years after the lands have been first offered for sale the Secretary of the Interior, under rules and regulations to be prescribed by him, shall cause to be sold to the highest bidder for cash the surface of any lands remaining unsold and of any surface lands forfeited by reason of non-payment of any part of the purchase price, without regard to the appraised value thereof: Provided, that the Secretary of the Interior is authorized to sell at not less than the appraised value to the McAlester Country Club, of McAlester, Oklahoma, the surface of not to exceed one hundred and sixty acres in section seventeen, township five north, range fifteen east: Provided further, that the mineral underlying the surface of the lands condemned for the state penitentiary at McAlester, Oklahoma, under the Indian Appropriation Act approved March third, nineteen hundred and nine, shall be subject to condemnation, under the laws of the state of Oklahoma, for state penitentiary purposes: And provided further, that said mineral shall not be mined for other than state penitentiary purposes.

§ 602. Regulation of terms and conditions of sale.—[5]. That the sales herein provided for shall be at public auc-

tion under rules and regulations and upon terms to be prescribed by the Secretary of the Interior, except that no payment shall be deferred longer than two years after the sale is made. All agricultural lands shall be sold in tracts not to exceed one hundred and sixty acres, and deeds shall not be issued to any one person for more than one hundred and sixty acres of agricultural land, grazing lands in tracts not to exceed six hundred and forty acres, and lands especially valuable by reason of proximity to towns or cities may, in the discretion of the Secretary of the Interior, be sold in lots or tracts containing not less than one acre each. All deferred payments shall bear interest at five per centum per annum, and if default be made in any payment when due all rights of the purchaser thereunder shall, at the discretion of the Secretary of the Interior, cease and the lands shall be taken possession of by him for the benefit of the two nations, and the money paid as the purchase price of such lands shall be forfeited to the Choctaw and Chickasaw Tribes of Indians.

§ 603. Upon approval of mineral trustees and appraisers sale may include coal and asphalt as well as surface.—[6]. That if the mining trustees of the Choctaw and Chickasaw Nations and the three appraisers herein provided for, or a majority of the said trustees and appraisers, shall find that such tract or tracts cannot be profitably mined for coal or asphalt and can be more advantageously disposed of by selling the surface and the coal and asphalt together, such tract or tracts may be sold in that manner, in the discretion of the Secretary of the Interior, and patents issued for said lands as provided by existing laws: Provided, that this section shall not apply to land now leased for the purpose of mining coal or asphalt within the segregated and reserved area herein described.

§ 604. Conveyances to purchasers.—[7]. That when full purchase price for any property sold herein is paid, the chief executives of the two tribes shall execute and deliver,

with the approval of the Secretary of the Interior, to each purchaser an appropriate patent or instrument of conveyance conveying to the purchaser the property so sold, and all conveyances made under this act shall convey the fee in the land with reservation to the Choctaw and Chickasaw Tribes of Indians of the coal and asphalt in such land, and shall contain a clause or clauses reciting and containing the reservations, restrictions, covenants, and conditions under which the said property was sold, as herein provided, and said conveyances shall specifically provide that the reservations, restrictions, covenants, and conditions therein contained shall run with the land and bind the grantees, successors, representatives, and assigns of the purchaser of the surface: Provided, that the purchaser of the surface of any coal or asphalt land shall have the right at any time before final payment is due to pay the full purchase price on the surface of said coal or asphalt land, with accrued interest, and shall thereupon be entitled to patent therefor, as herein provided.

§ 605. **Appropriation for conducting work.**—[8]. That there is hereby appropriated, out of any moneys in the treasury not otherwise appropriated belonging to the Choctaw and Chickasaw Tribes of Indians, the sum of fifty thousand dollars to pay expenses of the classification, appraisement, and sales herein provided for, and the proceeds received from the sales of lands hereunder shall be paid into the treasury of the United States to the credit of the Choctaws and Chickasaws and disposed of in accordance with section seventeen of an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, and the Indian Appropriation Act approved March third, nineteen hundred and eleven.

§ 606. **Secretary authorized to prescribe rules and regulations.**—[9]. That the Secretary of the Interior be, and

he is hereby, authorized to prescribe such rules, regulations, terms, and conditions not inconsistent with this act as he may deem necessary to carry out its provisions, including the establishment of an office during the sale of this land at McAlester, Pittsburg county, Oklahoma.¹

§ 607. Amendment to Segregated Land Act contained in the Indian Appropriation Bill of August 24, 1912.—Provided, that the houses and other valuable improvements, not including fencing and tillage, placed upon the segregated coal and asphalt lands in the Choctaw and Chickasaw Nations, in Oklahoma, by private individuals, while in actual possession of said land and prior to February nineteenth, nineteen hundred and twelve, and not purchased by the Indian nations, shall be appraised independently of the surface of the land on which they are located and shall be sold with the land at public auction at not less than the combined appraised value of the improvements and the surface of the land upon which they are located. Said improvements shall be sold for cash and the appraisement and sale of the same shall be made under the direction of the Secretary of the Interior and ninety-five per centum of the amount realized from the sale of the improvements shall be paid over under the direction of the Secretary of the Interior to the owner of the improvements and the appropriation hereinbefore made for this purpose shall be reimbursed out of the five per centum retained from the sale of the said improvements: Provided, that any improvements remaining unsold at the expiration of two years from the time when first offered for sale shall be sold under such regulations and terms of sale, independent of their appraised value, as the Secretary of the Interior may prescribe: Provided further, that persons owning improvements so appraised may remove the same at any time prior to the sale thereof, in which event the appraised value of the improvements and land shall be reduced by deducting

¹ Act Feb. 19, 1912, c. 46, 37 Stat. 67.

the appraised value of the improvements so removed: Provided further, that this section shall not apply to improvements placed on said lands by coal and asphalt lessees for mining purposes, but improvements located on lands leased for mining purposes belonging to, or heretofore paid for by, the Choctaw and Chickasaw Nations shall be appraised and the appraised value thereof shall be added to the appraised value of the land at the time of the sale: Provided further, that where any cemetery now exists on the said segregated coal and asphalt lands, the surface of the land within said cemetery, together with the land adjoining the same, where necessary, not exceeding twenty acres in the aggregate to any one cemetery, and where a church was in existence on said lands on February nineteenth, nineteen hundred and twelve, land not exceeding one acre for each church may, in the discretion of the Secretary of the Interior, be sold to the proper party, association or corporation, under such terms, conditions and regulations as he may prescribe, provided application to purchase the same for such purpose is made within sixty days from the date of the approval of this act.

That the Act of Congress approved February nineteenth, nineteen hundred and twelve (Public Number ninety-one), being "An act to provide for the sale of the surface of the coal and asphalt lands of the Choctaw and Chickasaw Nations, and for other purposes," be, and the same is hereby, amended to provide that the classification and appraisal of such lands shall be completed not later than December first, nineteen hundred and twelve.²

² From Indian Appropriation Act, c. 388, 37 Stat. 531-534.

CHAPTER 47**ORIGINAL CREEK AGREEMENT, APPROVED MARCH 3, 1901,
AND AMENDMENT THEREOF****(CHAPTER 676, 31 STAT. 861)**

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- 656. Creek courts not re-established.

§ 608. Preamble to Creek Agreement.¹—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the agreement negotiated between the Commission to the Five Civilized Tribes and the Muscogee or Creek Tribe of Indians at the city of Washington on the eighth day of March, nineteen hundred, as herein amended, is hereby accepted, ratified, and confirmed, and the same shall be of full force and effect when ratified by the Creek national council. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek national council and lay before it this agreement and the act of Congress ratifying it, and if the agreement be ratified by said council, as provided in the constitution of said nation, he shall transmit to the President of the United States the act of council ratifying the agreement, and the President of the United States shall thereupon issue his proclamation declaring the same duly ratified, and that all the provisions of this agreement have become law according to the terms thereof: Provided, that such ratification by the Creek national council shall be

¹ The following cases refer generally to the terms of this agreement, rather than to any particular section: *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Shulthis v. McDougal*, 225 U. S. 561, 32 Sup. Ct. 704, 56 L. Ed. 1205; *Ex parte Webb*, 225 U. S. 663, 32 Sup. Ct. 769, 56 L. Ed. 1248; *United States v. Ft. Smith & W. R. Co.*, 195 Fed. 211, 115 C. C. A. 163; *Hawkins v. Okla Oil Co.* (C. C.) 195 Fed. 345; *United States v. Jacobs*, 195 Fed. 707, 115 C. C. A. 507.

made within ninety days from the approval of this act by the President of the United States.

This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Muskogee (or Creek) Tribe of Indians, in Indian Territory, entered into in behalf of said tribe by Pleasant Porter, principal chief, and George A. Alexander, David M. Hodge, Isparhecher, Albert P. McKellop, and Cub McIntosh, delegates, duly appointed and authorized thereunto,

Witnesseth that in consideration of the mutual undertakings herein contained it is agreed as follows:

DEFINITIONS

§ 609. **Definitions.**—[1]. The words "Creek" and "Muskogee," as used in this agreement, shall be deemed synonymous, and the words "Creek Nation" and "Tribe" shall each be deemed to refer to the Muskogee Nation or Muskogee Tribe of Indians in Indian Territory. The words "principal chief" shall be deemed to refer to the principal chief of the Muskogee Nation. The words "citizen" or "citizens" shall be deemed to refer to a member or members of the Muskogee Tribe or Nation of Indians. The words "the Dawes Commission" or "Commission" shall be deemed to refer to the United States Commission to the Five Civilized Tribes.

GENERAL ALLOTMENT OF LANDS

§ 610. **Preliminary provisions.**—[2]. All lands belonging to the Creek tribe of Indians in the Indian Territory, except townsites and lands herein reserved for Creek schools and public buildings, shall be appraised at their true value, excluding only lawful improvements on lands in actual cultivation. The appraisement shall be made

under direction of the Dawes Commission by such number of committees, with necessary assistance, as may be deemed necessary to expedite the work, one member of each committee to be appointed by the principal chief; and if the members of any committee fail to agree as to the value of any tract of land, the value thereof shall be fixed by said Commission. Each committee shall make report of its work to said Commission, which shall from time to time prepare reports of same, in duplicate, and transmit them to the Secretary of the Interior for his approval, and when approved one copy thereof shall be returned to the office of said Commission for its use in making allotments as herein provided.

§ 611. General allotment of lands.—[3]. All lands of said tribe, except as herein provided, shall be allotted among the citizens of the tribe by said Commission so as to give each an equal share of the whole in value, as nearly as may be, in manner following: There shall be allotted to each citizen one hundred and sixty acres of land—boundaries to conform to the government survey—which may be selected by him so as to include improvements which belong to him. One hundred and sixty acres of land, valued at six dollars and fifty cents per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of values, and any allottee receiving lands of less than such standard value may, at any time, select other lands, which, at their appraised value, are sufficient to make his allotment equal in value to the standard so fixed.

If any citizen select lands the appraised value of which, for any reason, is in excess of such standard value, the excess of value shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and money equal in value to

his allotment. If any citizen select lands the appraised value of which is in excess of such standard value, he may pay the overplus in money, but if he fail to do so, the same shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds until all other citizens shall have received lands and funds equal in value to his allotment; and if there be not sufficient funds of the tribe to make the allotments of all other citizens of the tribe equal in value to his, then the surplus shall be a lien upon the rents and profits of his allotment until paid.²

§ 612. Allotments—Selection of for minors, etc.—[4]. Allotment for any minor may be selected by his father, mother, or guardian, in the order named, and shall not be sold during his minority. All guardians or curators appointed for minors and incompetents shall be citizens.

Allotments may be selected for prisoners, convicts, and aged and infirm persons by their duly appointed agents, and for incompetents by guardians, curators, or suitable persons akin to them, but it shall be the duty of said commission to see that such selections are made for the best interests of such parties.³

§ 613. Excessive holdings.—[5]. If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, select therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such excess he may dispose of the same to any other citizen, who may thereupon select lands so as to include such improvements; but, after the expiration of ninety days from the

² *United States v. Ft. Smith & W. R. Co.*, 195 Fed. 211, 115 C. C. A. 163; *Reed v. Welty* (D. C.) 197 Fed. 419.

³ *United States v. Ft. Smith & W. R. Co.*, 195 Fed. 211, 115 C. C. A. 163; *United States v. Shock* (C. C.) 187 Fed. 872.

ratification of this agreement any citizen may take any lands not already selected by another; but if lands so taken be in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee, and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: Provided, that the owner of improvements may remove the same if he desires.

§ 614. **Confirming previous allotments.**—[6]. All allotments made to Creek citizens by said commission prior to the ratification of this agreement, as to which there is no contest, and which do not include public property, and are not herein otherwise affected, are confirmed, and the same shall, as to appraisement and all things else, be governed by the provisions of this agreement; and said commission shall continue the work of allotment of Creek lands to citizens of the tribe as heretofore, conforming to provisions herein; and all controversies arising between citizens as to their right to select certain tracts of land shall be determined by said commission.⁴

§ 615. **Restrictions upon alienation of allotted lands.**—[7]. Lands allotted to citizens hereunder shall not in any manner whatsoever, or at any time, be incumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the date of the deed to the allottee therefor and such lands shall not be alienable by the allottee or his heirs at any time before the expiration of five years from the ratification of this agreement, except with the approval of the Secretary of the Interior.

Each citizen shall select from his allotment forty acres of

⁴ *United States v. Ft. Smith & W. R. Co.*, 195 Fed. 211, 115 C. C. A. 163; *Barnett v. Way*, 29 Okl. 780, 119 Pac. 419; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338; *Barnes v. Stonebraker*, 28 Okl. 75, 113 Pac. 903; overruled in *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244, as to alienability of lands; *De Graffenreid v. Iowa Land & Trust Co.*, 20 Okl. 687, 95 Pac. 624.

land as a homestead, which shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years, for which he shall have a separate deed, conditioned as above: Provided, that selections of homesteads for minors, prisoners, convicts, incompetents, and aged and infirm persons, who cannot select for themselves, may be made in the manner herein provided for the selection of their allotments; and if, for any reason, such selection be not made for any citizen, it shall be the duty of said commission to make selection for him.

The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after the ratification of this agreement, but if he have no such issue, then he may dispose of his homestead by will, free from limitation herein imposed, and if this be not done, the land shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, free from such limitation.⁵

§ 616. Each allottee to be placed in possession.— [8]. The Secretary of the Interior shall, through the United States Indian agent in said territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land and remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided, and receive certificate therefor, he shall be immediately thereupon so placed in possession of his land.

⁵ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738, reversing *Western Inv. Co. v. Tiger*, 21 Okl. 630, 96 Pac. 602; *Reed v. Welty* (D. C.) 197 Fed. 419; *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811; *Bartlett v. United States* (C. C. A.) 203 Fed. 410; *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244; *Stevens v. Elliott*, 30 Okl. 41, 118 Pac. 407; *Tate v. Gaines*, 25 Okl. 141, 105 Pac. 193, 26 L. R. A. (N. S.) 106; *Sharp v. Lancaster*, 23 Okl. 349, 100 Pac. 578; *McWilliams Inv. Co. v. Livingston*, 22 Okl. 584, 98 Pac. 914. See, also, cases cited under preceding note.

§ 617. Surplus tribal lands—Disposition of.—[9]. When allotment of one hundred and sixty acres has been made to each citizen, the residue of lands, not herein reserved or otherwise disposed of, and all the funds arising under this agreement shall be used for the purpose of equalizing allotments, and if the same be insufficient therefor, the deficiency shall be supplied out of any other funds of the tribe, so that the allotments of all citizens may be made equal in value, as nearly as may be, in manner herein provided.

TOWNSITES

§ 618. Townsites.—[10]. All towns in the Creek Nation having a present population of two hundred or more shall, and all others may, be surveyed, laid out, and appraised under the provisions of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes," approved May thirty-first, nineteen hundred, which said provisions are as follows:

"That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and parks, the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee Nations, as may at that time have a population of two hundred or more, in such manner as will best subserve the then present needs and the reasonable prospective growth of such towns. The work of surveying, laying out, and platting such townsites shall be done by competent surveyors, who shall prepare five copies of the plat of each townsite which, when the survey is approved by the Secretary of the Interior, shall be filed as follows: One in the office of the Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial juris-

diction of which the town is located, one with the Commission to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the best interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of townsites in any of said nations by contract.

"Hereafter the work of the respective townsite commissions provided for in the agreement with the Choctaw and Chickasaw Tribes ratified in section twenty-nine of the Act of June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes,' shall begin as to any townsite immediately upon the approval of the survey by the Secretary of the Interior and not before.

"The Secretary of the Interior may in his discretion appoint a townsite commission consisting of three members for each of the Creek and Cherokee Nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots in the nation for which it is appointed, acting in conformity with the provisions of any then existing act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior, and if no two members are able to agree the matter shall be determined by such Secretary.

"Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek or Cherokee Nation, a separate townsite commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which

would otherwise devolve upon the commission for that nation. Every such local commission shall be appointed in the manner provided in the Act approved June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the people of the Indian Territory.'

"The Secretary of the Interior, where in his judgment the public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances.

"As soon as the plat of any townsite is approved, the proper commission shall, with all reasonable dispatch and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior, shall, under the supervision of such Secretary, proceed to the disposition and sale of the lots in conformity with any then existing act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior, they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

"The Secretary of the Interior may, for good cause, remove any member of any townsite commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy otherwise occurring in like manner as the place was originally filled.

"It shall not be required that the townsite limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive, but such townsite limits and corporate limits shall be so established as to best subserve the then present needs and the reasonable prospec-

tive growth of the town, as the same shall appear at the time when such limits are respectively established: Provided further, that the exterior limits of all townsites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.

"Upon the recommendation of the Commission to the Five Civilized Tribes the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, or Cherokee Nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of the lands therein, and this irrespective of the population of such townsite at the time. Such townsites shall be surveyed, laid out, and platted and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other townsites: Provided further, that whenever any tract of land shall be set aside as herein provided which is occupied by a member of the tribe, such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior: Provided, that hereafter the Secretary of the Interior may, whenever the chief executive or principal chief of said nation fails or refuses to appoint a townsite commissioner for any town or to fill any vacancy caused by the neglect or refusal of the townsite commissioner appointed by the chief executive or principal chief of said nation to qualify or act, in his discretion appoint a commissioner to fill the vacancy thus created." *

* *Buster v. Wright*, 135 Fed. 947, 68 C. C. A. 505; *Buster & Jones v. Wright*, 5 Ind. T. 404, 82 S. W. 855; *Stanclift v. Fox*, 152 Fed. 697, 81 C. C. A. 623, affirming *Capital Townsite Co. v. Fox*, 6 Ind. T. 223, 90 S. W. 614; *United States v. Rea-Read Mill & Elevator Co.* (C. C.) 171 Fed. 501.

§ 619. Townsites—Owner of improvements preference right to purchase.—[11]. Any person in rightful possession of any town lot having improvements thereon, other than temporary buildings, fencing, and tillage, shall have the right to purchase such lot by paying one-half of the appraised value thereof, but if he shall fail within sixty days to purchase such lot and make the first payment thereon, as herein provided, the lot and improvements shall be sold at public auction to the highest bidder, under direction of the appraisement commission, at a price not less than their appraised value, and the purchaser shall pay the purchase price to the owner of the improvements, less the appraised value of the lot.

§ 620. Townsites—Owner of right of occupancy preference right to purchase.—[12]. Any person having the right of occupancy of a residence or business lot or both in any town, whether improved or not, and owning no other lot or land therein, shall have the right to purchase such lot by paying one-half of the appraised value thereof.

§ 621. Townsites—Person in lawful possession preference right to purchase.—[13]. Any person holding lands within a town occupied by him as a home, also any person who had at the time of signing this agreement purchased any lot, tract, or parcel of land from any person in legal possession at the time, shall have the right to purchase the lot embraced in same by paying one-half of the appraised value thereof, not, however, exceeding four acres.

§ 622. Townsites—Sale at public auction.—[14]. All town lots not having thereon improvements, other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after their appraisement, under direction of the Secretary of the Interior, after due advertisement, at public auction to the highest bidder at not less than their appraised value.

Any person having the right of occupancy of lands in any

town which has been or may be laid out into town lots, to be sold at public auction as above, shall have the right to purchase one-fourth of all the lots into which such lands may have been divided at two-thirds of their appraised value.

§ 623. **Purchase of town lots.**—[15]. When the appraisalment of any town lot is made, upon which any person has improvements as aforesaid, said appraisalment commission shall notify him of the amount of said appraisalment, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, as herein provided, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money in three equal annual installments, without interest.

Any person who may purchase an unimproved lot shall proceed to make payment for same in such time and manner as herein provided for the payment of sums due on improved lots, and if in any case any amount be not paid when due, it shall thereafter bear interest at the rate of ten per centum per annum until paid. The purchaser may in any case at any time make full payment for any town lot.

§ 624. **Town lot exempted from forced sale.**—[16]. All town lots purchased by citizens in accordance with the provisions of this agreement shall be free from incumbrance by any debt contracted prior to date of his deed therefor, except for improvements thereon.

§ 625. **Town lots.**—[17]. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided, and the same shall constitute a lien upon the interest of the purchaser therein after any payment thereon has been made by him, and if forfeiture of any lot be made all taxes assessed against such lot shall be paid out of any money paid thereon by the purchaser.

§ 626. **Cemeteries.**—[18]. The surveyors may select and locate a cemetery within suitable distance from each

town, to embrace such number of acres as may be deemed necessary for such purpose, and the appraisement commission shall appraise the same at not less than twenty dollars per acre, and the town may purchase the land by paying the appraised value thereof; and if any citizen have improvements thereon, other than fencing and tillage, they shall be appraised by said commission and paid for by the town. The town authorities shall dispose of the lots in such cemetery at reasonable prices, in suitable sizes for burial purposes, and the proceeds thereof shall be applied to the general improvement of the property.

§ 627. **Public buildings—Grounds for.**—[19]. The United States may purchase in any town in the Creek Nation, suitable land for courthouses, jails, and other necessary public buildings for its use, by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such buildings are to be erected; and if any person have improvements thereon, other than temporary buildings, fencing, and tillage, the same shall be appraised and paid for by the United States.

§ 628. **Authorizing sale of lands.**—[20]. Henry Kendall College, Nazareth Institute, and Spaulding Institute, in Muskogee, may purchase the parcels of land occupied by them, or which may have been laid out for their use and so designated upon the plat of said town, at one-half of their appraised value, upon conditions herein provided; and all other schools and institutions of learning located in incorporated towns in the Creek Nation may, in like manner, purchase the lots or parcels of land occupied by them.

§ 629. **Authorizing conveyances to churches.**—[21]. All town lots or parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be properly conveyed to the churches to which such improvements belong gratuitously, and if such churches have other adjoining lots

inclosed, actually necessary for their use, they may purchase the same by paying one-half the appraised value thereof.

§ 630. **Authorizing surveys.**—[22]. The towns of Clarksville, Coweta, Gibson Station, and Mounds may be surveyed and laid out in town lots and necessary streets and alleys, and platted as other towns, each to embrace such amount of land as may be deemed necessary, not exceeding one hundred and sixty acres for either, and in manner not to include or interfere with the allotment of any citizen selected prior to the date of this agreement, which survey may be made in manner provided for other towns; and the appraisement of the town lots of said towns may be made by any committee appointed for either of the other towns hereinbefore named, and the lots in said towns may be disposed of in like manner and on the same conditions and terms as those of other towns. All of such work may be done under the direction of and subject to the approval of the Secretary of the Interior.

TITLES

§ 631. **Conveyances to allottees.**—[23]. Immediately after the ratification of this agreement by Congress and the tribe, the Secretary of the Interior shall furnish the principal chief with blank deeds necessary for all conveyances herein provided for, and the principal chief shall thereupon proceed to execute in due form and deliver to each citizen who has selected or may hereafter select his allotment, which is not contested, a deed conveying to him all right, title, and interest of the Creek Nation and of all other citizens in and to the lands embraced in his allotment certificate, and such other lands as may have been selected by him for equalization of his allotment.

The principal chief shall, in like manner and with like effect, execute and deliver to proper parties deeds of conveyance in all other cases herein provided for. All lands or town lots to be conveyed to any one person shall, so far as

practicable, be included in one deed, and all deeds shall be executed free of charge.

All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his deed.

Any allottee accepting such deed shall be deemed to assent to the allotment and conveyance of all the lands of the tribe, as provided herein, and as a relinquishment of all his right, title, and interest in and to the same, except in the proceeds of lands reserved from allotment.

The acceptance of deeds of minors and incompetents, by persons authorized to select their allotments for them, shall be deemed sufficient to bind such minors and incompetents to allotment and conveyance of all other lands of the tribe, as provided herein.

The transfer of the title of the Creek Tribe to individual allottees and to other persons, as provided in this agreement, shall not inure to the benefit of any railroad company, nor vest in any railroad company, any right, title, or interest in or to any of the lands in the Creek Nation.

All deeds when so executed and approved shall be filed in the office of the Dawes Commission, and there recorded without expense to the grantee, and such records shall have like effect as other public records.

RESERVATIONS

§ 632. **Reservations.**—[24]. The following lands shall be reserved from the general allotment herein provided for:

(a) All lands herein set apart for townsites.

(b) All lands to which, at the date of the ratification of this agreement, any railroad company may, under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stockyards, or similar uses connected with the maintenance and operation of the railroad.

- (c) Forty acres for the Eufaula High School.
- (d) Forty acres for the Wealaka Boarding School.
- (e) Forty acres for the Newyaka Boarding School.
- (f) Forty acres for the Wetumka Boarding School.
- (g) Forty acres for the Euchee Boarding School.
- (h) Forty acres for the Coweta Boarding School.
- (i) Forty acres for the Creek Orphan Home.
- (j) Forty acres for the Tallahassee Colored Boarding School.
- (k) Forty acres for the Pecan Creek Colored Boarding School.
- (l) Forty acres for the Colored Creek Orphan Home.
- (m) All lands selected for town cemeteries, as herein provided.
- (n) The lands occupied by the university established by the American Baptist Home Mission Society, and located near the town of Muskogee, to the amount of forty acres, which shall be appraised, excluding improvements thereon, and said university shall have the right to purchase the same by paying one-half the appraised value thereof, on terms and conditions herein provided. All improvements made by said university on lands in excess of said forty acres shall be appraised and the value thereof paid to it by the person to whom such lands may be allotted.
- (o) One acre each for the six established Creek court-houses, with the improvements thereon.
- (p) One acre each for all churches and schools outside of towns now regularly used as such.

All reservations under the provisions of this agreement, except as otherwise provided herein, when not needed for the purposes for which they are at present used, shall be sold at public auction to the highest bidder, to citizens only, under directions of the Secretary of the Interior.⁷

⁷ United States v. Ft. Smith & W. R. Co., 195 Fed. 211, 115 C. C. A. 163; Garrett v. American Baptist Home Mission Society, 29 Okl. 272, 116 Pac. 921.

MUNICIPAL CORPORATIONS

§ 633. **Municipal corporations.**—[25]. Authority is hereby conferred upon municipal corporations in the Creek Nation, with the approval of the Secretary of the Interior, to issue bonds and borrow money thereon for sanitary purposes, and for the construction of sewers, lighting plants, waterworks, and schoolhouses, subject to all the provisions of laws of the United States in force in the organized territories of the United States in reference to municipal indebtedness and issuance of bonds for public purposes; and said provisions of law are hereby put in force in said nation and made applicable to the cities and towns therein the same as if specially enacted in reference thereto.

CLAIMS

§ 634. **Claims.**—[26]. All claims of whatsoever nature, including the "Loyal Creek claim" under article four of the treaty of eighteen hundred and sixty-six, and the "Self-Emigration claim" under article twelve of the treaty of eighteen hundred and thirty-two, which the tribe or any individual thereof may have against the United States, or any other claim arising under the treaty of eighteen hundred and sixty-six, or any claim which the United States may have against said tribe, shall be submitted to the Senate of the United States for determination; and within two years from the ratification of this agreement the Senate shall make final determination thereof; and in the event that any sums are awarded the said tribe, or any citizen thereof, provision shall be made for immediate payment of same.

Of these claims the "Loyal Creek claim," for what they suffered because of their loyalty to the United States government during the Civil War, long delayed, is so urgent in its character that the parties to this agreement express the hope that it may receive consideration and be determined at the earliest practicable moment.

Any other claim which the Creek Nation may have against the United States may be prosecuted in the Court of Claims of the United States, with right of appeal to the Supreme Court; and jurisdiction to try and determine such claim is hereby conferred upon said courts.

FUNDS OF THE TRIBE

§ 635. Funds of the tribe.—[27]. All treaty funds of the tribe shall hereafter be capitalized for the purpose of equalizing allotments and for the other purposes provided in this agreement.

§ 636. Rolls of citizenship.—[28]. No person, except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement, and no person whomsoever shall be added to said rolls after the ratification of this agreement.

§ 636a. Descent of allotted lands.—All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall be placed upon the rolls to be made by said commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living, shall be placed on the rolls made by said commission; and if any such child die after said date, the lands and moneys to which it would be entitled, if living,

shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

The rolls so made by said commission, when approved by the Secretary of the Interior, shall be the final rolls of citizenship of said tribe, upon which the allotment of all lands and the distribution of all moneys and other property of the tribe shall be made, and to no other persons.⁸

§ 637. **Laws of descent of Arkansas substituted for Creek laws of descent.**—And provided further, that the act entitled “An act to ratify and confirm an agreement with the Muskogee or Creek Tribe of Indians, and for other purposes,” approved March first, nineteen hundred and one, in so far as it provides for descent and distribution according to the laws of the Creek Nation, is hereby repealed and the descent and distribution of lands and moneys provided for in said act shall be in accordance with the provisions of chapter forty-nine of Mansfield’s Digest of the Statutes of Arkansas in force in Indian Territory.⁹

§ 638. **Rolls of citizenship.**—[29]. Said commission shall have authority to enroll as Creek citizens certain full-blood Creek Indians now residing in the Cherokee Nation, and also certain full-blood Creek Indians now residing in

⁸ *De Graffenreid v. Iowa Land & Trust Co.*, 20 Okl. 687, 95 Pac. 624; *Bodle v. Shoenfelt*, 22 Okl. 94, 97 Pac. 556; *Irving v. Diamond*, 23 Okl. 325, 100 Pac. 557; *Hooks v. Kennard*, 28 Okl. 457, 114 Pac. 744; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338; *Barnett v. Way*, 29 Okl. 780, 119 Pac. 418; *Divine v. Harmon*, 30 Okl. 820, 121 Pac. 219; *Morley v. Fewel*, 32 Okl. 452, 122 Pac. 700; *Brady v. Sizemore*, 33 Okl. 169, 124 Pac. 615; *Shellenbarger v. Fewel*, 34 Okl. 79, 124 Pac. 617; *Reynolds v. Fewel*, 34 Okl. 112, 124 Pac. 623; *Bilby v. Brown*, 34 Okl. 738, 126 Pac. 1024; *Oklahoma Land Co. v. Thomas*, 34 Okl. 681, 127 Pac. 8; *Ground v. Dingman*, 33 Okl. 760, 127 Pac. 1078; *Shulthis v. McDougal*, 170 Fed. 529, 95 C. C. A. 615; *Woodward v. De Graffenried* (Okl.) 131 Pac. 162; *Davison v. Gibson*, 56 Fed. 443, 5 C. C. A. 543; *Brann v. Bell* (C. C.) 192 Fed. 427; *Armstrong v. Wood* (C. C.) 195 Fed. 137; *Reed v. Welty* (D. C.) 197 Fed. 419.

⁹ This section is not a part of the Creek Agreement, but an extract from Indian Appropriation Bill of May 27, 1902, effective date postponed to July 1, 1902. 32 Stat. 258.

the Creek Nation who have recently removed there from the state of Texas, and the families of full-blood Creeks who now reside in Texas, and such other recognized citizens found on the Creek rolls as might, by reason of nonresidence, be excluded from enrollment by section twenty-one of said act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight: Provided, that such non-residents shall, in good faith, remove to the Creek Nation before said commission shall complete the rolls of Creek citizens as aforesaid.

MISCELLANEOUS

§ 639. **Lien for purchase price town lots.**—[30]. All deferred payments, under provisions of this agreement, shall constitute a lien in favor of the tribe on the property for which the debt was contracted, and if, at the expiration of two years from the date of payment of the fifteen per centum aforesaid, default in any annual payment has been made, the lien for the payment of all purchase money remaining unpaid may be enforced in the United States court within the jurisdiction of which the town is located in the same manner as vendor's liens are enforced; such suit being brought in the name of the principal chief, for the benefit of the tribe.

§ 640. **Payments—How made.**—[31]. All moneys to be paid to the tribe under any of the provisions of this agreement shall be paid, under direction of the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe, and an itemized report thereof shall be made monthly to the Secretary of the Interior and to the principal chief.

§ 641. **Funds—How used or paid out.**—[32]. All funds of the tribe, and all moneys accruing under the provisions of this agreement, when needed for the purposes of equalizing allotments or for any other purposes herein prescribed, shall be paid out under the direction of the Secretary of the In-

terior; and when required for per capita payments, if any, shall be paid out directly to each individual by a bonded officer of the United States, under direction of the Secretary of the Interior, without unnecessary delay.

§ 642. **Creek funds not to be used.**—[33]. No funds belonging to said tribe shall hereafter be used or paid out for any purposes by any officer of the United States without consent of the tribe, expressly given through its national council, except as herein provided.

§ 643. **Expenses of allotment.**—[34]. The United States shall pay all expenses incident to the survey, platting, and disposition of town lots, and of allotment of lands made under the provisions of this agreement, except where the town authorities have been or may be duly authorized to survey and plat their respective towns at the expense of such town.

§ 644. **Parents natural guardians.**—[35]. Parents shall be the natural guardians of their children, and shall act for them as such unless a guardian shall have been appointed by a court having jurisdiction; and parents so acting shall not be required to give bond as guardians unless by order of such court, but they, and all other persons having charge of lands, moneys, and other property belonging to minors and incompetents, shall be required to make proper accounting therefor in the court having jurisdiction thereof in manner deemed necessary for the preservation of such estates.

§ 645. **Seminole-Creek allotments.**—[36]. All Seminole citizens who have heretofore settled and made homes upon lands belonging to the Creeks may there take, for themselves and their families, such allotments as they would be entitled to take of Seminole lands, and all Creek citizens who have heretofore settled and made homes upon lands belonging to Seminoles may there take, for themselves and their families, allotments of one hundred and sixty acres

each, and if the citizens of one tribe thus receive a greater number of acres than the citizens of the other, the excess shall be paid for by such tribe, at a price to be agreed upon by the principal chiefs of the two tribes, and if they fail to agree, the price shall be fixed by the Indian agent, but the citizenship of persons so taking allotments shall in no wise be affected thereby.

Titles shall be conveyed to Seminoles selecting allotments of Creek lands in manner herein provided for conveyance of Creek allotments, and titles shall be conveyed to Creeks selecting allotments of Seminole lands in manner provided in the Seminole Agreement, dated December sixteenth, eighteen hundred and ninety-seven, for conveyance of Seminole allotments: Provided, that deeds shall be executed to allottees immediately after selection of allotment is made.

This provision shall not take effect until after it shall have been separately and specifically approved by the Creek national council and by the Seminole general council; and if not approved by either, it shall fail altogether, and be eliminated from this agreement without impairing any other of its provisions.

§ 646. **Leases.**—[37]. Creek citizens may rent their allotments, when selected, for a term not exceeding one year, and after receiving title thereto without restriction, if adjoining allottees are not injured thereby, and cattle grazed thereon shall not be liable to any tribal tax; but when cattle are introduced into the Creek Nation and grazed on lands not selected by citizens, the Secretary of the Interior is authorized to collect from the owners thereof a reasonable grazing tax for the benefit of the tribe; and section twenty-one hundred and seventeen, Revised Statutes of the United States, shall not hereafter apply to Creek lands.

§ 647. **Timber.**—[38]. After any citizen has selected his allotment he may dispose of any timber thereon, but if he dispose of such timber, or any part of same, he shall not

thereafter select other lands in lieu thereof, and his allotment shall be appraised as if in condition when selected.

No timber shall be taken from lands not so selected, and disposed of, without payment of reasonable royalty thereon, under contract to be prescribed by the Secretary of the Interior.

§ 648. Noncitizen not to pay permit tax.—[39]. No noncitizen renting lands from a citizen for agricultural purposes, as provided by law, whether such lands have been selected as an allotment or not, shall be required to pay any permit tax.

§ 649. Creek schools.—[40]. The Creek school fund shall be used, under direction of the Secretary of the Interior, for the education of Creek citizens, and the Creek schools shall be conducted under rules and regulations prescribed by him, under direct supervision of the Creek school superintendent and a supervisor appointed by the Secretary, and under Creek laws, subject to such modifications as the Secretary of the Interior may deem necessary to make the schools most effective and to produce the best possible results.

All teachers shall be examined by or under direction of said superintendent and supervisor, and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed, but where all qualifications are equal preference shall be given to citizens in such employment.

All moneys for running the schools shall be appropriated by the Creek national council, not exceeding the amount of the Creek school fund, seventy-six thousand four hundred and sixty-eight dollars and forty cents; but if it fail or refuse to make the necessary appropriations the Secretary of the Interior may direct the use of a sufficient amount of the school funds to pay all expenses necessary to the efficient conduct of the schools, strict account thereof to be rendered to him and to the principal chief.

All accounts for expenditures in running the schools shall be examined and approved by said superintendent and supervisor, and also by the general superintendent of Indian schools, in Indian Territory, before payment thereof is made.

If the superintendent and supervisor fail to agree upon any matter under their direction or control, it shall be decided by said general superintendent, subject to appeal to the Secretary of the Interior; but his decision shall govern until reversed by the Secretary.

§ 650. Curtis Act, except section 14, not to apply to Creeks.—[41]. The provisions of section thirteen of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, or be in force in the Creek Nation, and no act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation, except section fourteen of said last-mentioned act, which shall continue in force as if this agreement had not been made.

§ 651. Acts of Creek council submitted to President.—[42]. No act, ordinance, or resolution of the national council of the Creek Nation in any manner affecting the lands of the tribe, or of individuals after allotment, or the moneys or other property of the tribe, or of the citizens thereof, except appropriations for the necessary incidental and salaried expenses of the Creek government as herein limited, shall be of any validity until approved by the President of the United States. When any such act, ordinance, or resolution shall be passed by said council and approved by the principal chief, a true and correct copy thereof, duly certified, shall be immediately transmitted to the President, who shall, within thirty days after received by him, approve or disapprove the same. If disapproved, it shall

be so indorsed and returned to the principal chief; if approved, the approval shall be indorsed thereon, and it shall be published in at least two newspapers having a bona fide circulation in the Creek Nation.

§ 652. Prohibition.—[43]. The United States agrees to maintain strict laws in said nation, against the introduction, sale, barter, or giving away of liquors or intoxicants of any kind whatsoever.¹⁰

§ 653. Not to affect existing treaties except where inconsistent.—[44]. This agreement shall in no wise affect the provisions of existing treaties between the United States and said tribe except so far as inconsistent therewith.

§ 654. General authority conferred upon Secretary.—[45]. All things necessary to carrying into effect the provisions of this agreement, not otherwise herein specifically provided for, shall be done under authority and direction of the Secretary of the Interior.

§ 655. Creek tribal government to expire March 4, 1906.—[46]. The tribal government of the Creek Nation shall not continue longer than March fourth, nineteen hundred and six, subject to such further legislation as Congress may deem proper.

§ 656. Creek courts not re-established.—[47]. Nothing contained in this agreement shall be construed to revive or re-establish the Creek courts which have been abolished by former acts of Congress.

Approved March 1, 1901. Ratified by the Creeks May 25, 1901.

¹⁰ Ex parte Webb, 225 U. S. 663, 32 Sup. Ct. 769, 56 L. Ed. 1248; United States Exp. Co. v. Friedman, 191 Fed. 673, 112 C. C. A. 219, reversing United States v. United States Exp. Co. (D. C.) 180 Fed. 1006; Evans v. Victor (C. C. A.) 204 Fed. 361; United States v. Wright, 229 U. S. 226, 33 Sup. Ct. 630, 57 L. Ed. —.

CHAPTER 48

SUPPLEMENTAL CREEK AGREEMENT APPROVED JUNE 30,
1902

(CHAPTER 1323, 32 STAT. 500)

- § 657. Preamble to Supplemental Creek Agreement.
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- 677. Not to repeal original agreement except where in conflict.
- 678. Agreement to be binding when ratified.
- 679. Submission to Creek Council.

§ 657. Preamble to Supplemental Creek Agreement.¹—
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following supplemental agreement, submitted by certain commissioners of the Creek Tribe of Indians, as herein amended, is hereby ratified and confirmed on the part of the United States, and the same shall be of full force and effect if ratified by the Creek tribal council on or before the

¹ The following cases discuss generally the terms of this agreement, as well as particular sections: *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *United States v. Shock* (C. C.) 187 1. 862-870.

first day of September, nineteen hundred and two, which said supplemental agreement is as follows:

This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Thomas B. Needles, and Clifton R. Breckenridge, duly appointed and authorized thereunto, and the Muskogee (or Creek) tribe of Indians, in Indian Territory, entered into in behalf of the said tribe by Pleasant Porter, principal chief, Roley McIntosh, Thomas W. Perryman, Amos McIntosh, and David M. Hodge, commissioners duly appointed and authorized thereunto, witnesseth, that in consideration of the mutual undertakings herein contained it is agreed as follows:

DEFINITIONS

§ 658. **Definitions.**—The words “Creek” and “Muskogee” as used in this agreement shall be deemed synonymous, and the words “Nation” and “Tribe” shall each be deemed to refer to the Muskogee Nation or Muskogee Tribe of Indians in Indian Territory. The words “principal chief” shall be deemed to refer to the principal chief of the Muskogee Nation. The words “citizen” or “citizens” shall be deemed to refer to a member or members of the Muskogee tribe or nation of Indians. The word “Commissioner” shall be deemed to refer to the United States Commission to the Five Civilized Tribes.

ALLOTMENT OF LANDS

§ 659. **Allotment of lands.**—[2]. Section 2 of the agreement ratified by Act of Congress approved March, 1901 (31 Stat. L. 861), is amended and as so amended is re-enacted to read as follows:

All lands belonging to the Creek Tribe of Indians in Indian Territory, except townsites and lands reserved for Creek schools and churches, railroads, and town cemeteries, in accordance with the provisions of the Act of Congress

approved March 1, 1901 (31 Stat. L. 861), shall be appraised at not to exceed \$6.50 per acre, excluding only lawful improvements on lands in actual cultivation.

Such appraisements shall be made, under the direction and supervision of the Commission to the Five Civilized Tribes, by such number of committees with necessary assistance as may be deemed necessary to expedite the work, one member of each committee to be appointed by the principal chief. Said Commission shall have authority to revise and adjust the work of said committees; and if the members of any committee fail to agree as to the value of any tract of land, the value thereof shall be fixed by said Commission. The appraisal so made shall be submitted to the Secretary of the Interior for approval.

§ 660. Amending original agreement.—[3]. Paragraph 2 of section 3 of the agreement ratified by said Act of Congress approved March 1, 1901, is amended and as so amended is re-enacted to read as follows:

If any citizen select lands the appraised value of which is \$6.50 per acre, he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment.

§ 661. Commission to have exclusive jurisdiction.—[4]. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine, under the direction of the Secretary of the Interior, all controversies arising between citizens as to their right to select certain tracts of land.

§ 662. Allotments may be canceled for mistake.—[5]. Where it is shown to the satisfaction of said Commission that it was the intention of a citizen to select lands which include his home and improvements, but that through error and mistake he had selected land which did not include his home and improvements, said Commission is authorized to cancel said selection and the certificate of selection

or allotment embracing said lands, and permit said citizens to make a new selection including said home and improvements; and should said land including said home and improvements have been selected by any other citizen of said nation, the citizen owning said home and improvements shall be permitted to file, within ninety days from the ratification of this agreement, a contest against the citizen having previously selected the same and shall not be prejudiced therein by reason of lapse of time or any provision of law or rules and regulations to the contrary.

DESCENT AND DISTRIBUTION

§ 663. Descent and distribution.—[6]. The provisions of the act of Congress approved March 1, 1901 (31 Stat. L. 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed and the descent and distribution of land and money provided for by said act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: Provided, that only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: And provided further, that if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to noncitizen heirs in the order named in said chapter 49.²

ROLLS OF CITIZENSHIP

§ 664. Descent of lands allotted to deceased members of the tribe.—[7]. All children born to those citizens who

² De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624; In re Brown's Estate, 22 Okl. 216, 97 Pac. 613; Hooks v. Kennard, 28 Okl. 457, 114 Pac. 744; Lamb v. Baker, 27 Okl. 739, 117 Pac. 189; Hughes Land Co. v. Bailey, 30 Okl. 194, 120 Pac. 290; Brady v. Sizemore, 33 Okl. 169, 124 Pac. 615; Rentle v. McCoy, 35 Okl. 77, 128 Pac. 244; Washington v. Miller, 34 Okl. 259, 129 Pac. 58; Shulthis v. McDougal, 170 Fed. 529, 95 C. C. A. 615; Brann v. Bell (C. C.) 192 Fed. 427; Woodward v. De Graffenried (Okl.) 131 Pac. 162; Armstrong v. Wood (C. C.) 195 Fed. 137; Reed v. Welty (D. C.) 197 Fed. 419; McKee v. Henry (C. C. A.) 201 Fed. 74.

are entitled to enrollment as provided by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.³

§ 665. Enrollment and descent where death before allotment of children living May 25, 1901.—[8]. All children who have not heretofore been listed for enrollment living May 25, 1901, born to citizens whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895 and entitled to enrollment as provided by the act of Congress approved March 1, 1901 (31 Stat. L. 861), shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die, before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.⁴

§ 666. Supplemental roll for certain children.—[9]. If the rolls of citizenship provided for by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), shall have been completed by said commission prior to the ratification of this agreement, the names of children entitled to enrollment under the provisions of sections 7 and 8 hereof shall be placed upon a supplemental roll of citizens of the Creek Nation, and said supplemental roll when approved by the Secretary of the Interior shall in all respects be held to be

See cases cited to section 6 of Creek Supplemental Agreement, the section immediately preceding.

See authorities cited under section 663. .

a part of the final rolls of citizenship of said tribe: Provided, that the Dawes Commission be, and is hereby, authorized to add the following persons to the Creek roll: Nar-wal-le-pe-se, Mary Washington, Walter Washington, and Willie Washington, who are Creek Indians but those names were left off the roll through neglect on their part.

ROADS

§ 667. **Roads.**—[10]. Public highways or roads three rods in width, being one and one-half rods on each side of the section line, may be established along all section lines without any compensation being paid therefor; and all allottees, purchasers, and others shall take the title to such lands subject to this provision. And public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues, and to be paid by the Creek Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid in the same manner.

§ 668. **Townsites.**—[11]. In all instances of the establishment of townsites in accordance with the provisions of the Act of Congress approved May 31, 1900 (31 Stat. L. 231), or those of section 10 of the agreement ratified by Act of Congress approved March 1, 1901 (31 Stat. L. 861), authorizing the Secretary of the Interior, upon the recommendation of the Commission to the Five Civilized Tribes, at any time before allotment, to set aside and reserve from allotment any lands in the Creek Nation not exceeding 160 acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any rail-

road which shall be constructed, or be in process of construction, in or through said nation prior to the allotment of lands therein, any citizen who shall have previously selected such townsite, or any portion thereof, for his allotment, or who shall have been by reason of improvements therein entitled to select the same for his allotment, shall be paid by the Creek Nation the full value of his improvements thereon at time of the establishment of the townsite, under rules and regulations to be prescribed by the Secretary of the Interior: Provided, however, that such citizens may purchase any of said lands in accordance with the provisions of the Act of March 1, 1901 (31 Stat. L. 61): And provided further, that the lands which may hereafter be set aside and reserved for townsites upon recommendation of the Dawes Commission as herein provided shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such townsites, and not to exceed 640 acres for each townsite, and 10 per cent. of the net proceeds arising from the sale of that portion of the land within the townsite so selected by him, or which he was so entitled to select; and this shall be in addition to his right to receive from other lands an allotment of 160 acres.

CEMETERIES

§ 669. **Cemeteries.**—[12]. A cemetery other than a town cemetery included within the boundaries of an allotment shall not be desecrated by tillage or otherwise, but no interment shall be made therein except with the consent of the allottee, and any person desecrating by tillage or otherwise a grave or graves in a cemetery included within the boundaries of an allotment shall be guilty of a misdemeanor, and upon conviction be punished as provided in section 567 of Mansfield's Digest of the Statutes of Arkansas.

§ 670. **Cemeteries.**—[13]. Whenever the townsite survey of any town in the Creek Nation shall have selected

and located a cemetery, as provided in section 18 of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), the town authorities shall not be authorized to dispose of lots in such cemetery until payment shall have been made to the Creek Nation for land used for said cemetery, as provided in said act of Congress, and if the town authorities fail or refuse to make payment as aforesaid within one year of the approval of the plat of said cemetery by the Secretary of the Interior, the land so reserved shall revert to the Creek Nation and be subject to allotment. And for lands heretofore or hereafter designated as parks upon any plat or any townsite the town shall make payment into the treasury of the United States to the credit of the Creek Nation within one year at the rate of \$20 per acre, and if such payment be not made within that time the lands so designated as a park shall be platted into lots and sold as other town lots.

MISCELLANEOUS

§ 671. Tribal funds—Disposition of.—[14]. All funds of the Creek Nation not needed for equalization of allotments, including the Creek school fund, shall be paid out under direction of the Secretary of the Interior per capita to the citizens of the Creek Nation on the dissolution of the Creek tribal government.

§ 672. Certain reservations not affected.—[15]. The provision of section 24 of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), for the reservation of land for the six established Creek courthouses is hereby repealed.

§ 673. Restrictions upon alienation of allotted lands.—[16]. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the In-

terior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, inalienable, and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.

Selections of homesteads for minors, prisoners, convicts, incompetents and aged and infirm persons, who cannot select for themselves, may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him. The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the laws of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.⁵

⁵ *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811; *Reed v. Welty* (D. C.) 197 Fed. 419; *Moore v. Sawyer* (C. C.) 167 Fed. 826; *United States v. Jacobs*, 195 Fed. 707, 115 C. C. A. 507; *Alfrey v. Colbert*, 168 Fed. 231, 93 C. C. A. 517; *In re Washington's Estate* (Okl.) 128 Pac. 1079; *Texas Co. v. Henry*, 34 Okl. 342, 126 Pac. 224; *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244; *Divine v. Harmon*, 30 Okl. 820, 121 Pac. 219; *Groom v. Wright*, 30 Okl. 652, 121 Pac. 215; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338; *Harris v. Lynde-Bowman-Darby Co.*, 29 Okl. 362, 116 Pac. 808; *Bragdon v. McShea*, 26 Okl. 35, 107 Pac. 916; *Blakemore v. Johnson*, 24 Okl. 544, 103 Pac. 554; *Baker v. Hammett*, 23 Okl. 480, 100 Pac. 1114; *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588.

§ 674. **Leases of allotted lands.**—[17]. Section 37 of the agreement ratified by said Act of March 1, 1901, is amended, and as so amended is re-enacted to read as follows:

“Creek citizens may rent their allotments, for strictly nonmineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes, and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotment shall not be liable to any tribal tax, but when cattle are introduced into the Creek Nation and grazed on lands not selected for allotment by citizens, the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section 2117 of the Revised Statutes of the United States shall not hereafter apply to Creek lands.” *

§ 675. **Cattle grazing regulated.**—[18]. When cattle are introduced into the Creek Nation to be grazed upon either lands not selected for allotment or upon lands allotted or selected for allotment the owner thereof, or the party or parties so introducing the same, shall first obtain a permit from the United States Indian agent, Union Agency,

* *Moore v. Sawyer* (C. C.) 167 Fed. 826; *Muskogee Land Co. v. Mullins*, 165 Fed. 179, 91 C. C. A. 213, 16 Ann. Cas. 387, affirming *Muskogee Land Co. v. Mullins*, 7 Ind. T. 189, 104 S. W. 586; *Morrison v. Burnette*, 154 Fed. 617, 83 C. C. A. 391; *Scherer v. Hulquist* (Okl.) 130 Pac. 544; *Groom v. Wright*, 30 Okl. 652, 121 Pac. 215; *Williams v. Williams*, 22 Okl. 672, 98 Pac. 909.

authorizing the introduction of such cattle. The application for said permit shall state the number of cattle to be introduced, together with a description of the same, and shall specify the lands upon which said cattle are to be grazed, and whether or not said lands have been selected for allotment. Cattle so introduced and all other live stock owned or controlled by noncitizens of the nation shall be kept upon inclosed lands, and if any such cattle or other live stock trespass upon lands allotted to or selected for allotment by any citizen of said nation, the owner thereof shall, for the first trespass, make reparation to the party injured for the true value of the damages he may have sustained, and for every trespass thereafter double damages, to be recovered with costs, whether the land upon which trespass is made is inclosed or not.

Any person who shall introduce any cattle into the Creek Nation in violation of the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than \$100, and shall stand committed until such fine and costs are paid, such commitment not to exceed one day for every \$2 of said fine and costs; and every day said cattle are permitted to remain in said nation without a permit for their introduction having been obtained shall constitute a separate offense.

§ 676. Each allottee to be put in possession.—[19]. Section 8 of the agreement ratified by said Act of March 1, 1901, is amended and as so amended is re-enacted to read as follows:

“The Secretary of the Interior shall, through the United States Indian agent in said territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land and remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided and receive certificate therefor, he shall be immediately thereupon so placed

in possession of his land, and during the continuance of the tribal government the Secretary of the Interior, through such Indian agent, shall protect the allottee in his right to possession against any and all persons claiming under any lease, agreement, or conveyance not obtained in conformity to law."

§ 677. Not to repeal original agreement except where in conflict.—[20]. This agreement is intended to modify and supplement the agreement ratified by said Act of Congress approved March 1, 1901, and shall be held to repeal any provision in that agreement or in any prior agreement, treaty, or law in conflict herewith.⁷

§ 678. Agreement to be binding when ratified.—[21]. This agreement shall be binding upon the United States and the Creek Nation, and upon all persons affected thereby when it shall have been ratified by Congress and the Creek National Council, and the fact of such ratification shall have been proclaimed as hereinafter provided.

§ 679. Submission to Creek Council.—[22]. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek Nation Council and submit this agreement, as ratified by Congress, to such council for its consideration, and if the agreement be ratified by the National Council, as provided in the constitution of the tribe, the principal chief shall transmit to the President of the United States a certified copy of the act of the council ratifying the agreement, and thereupon the President shall issue his proclamation making public announcement of such ratification; thenceforward all the provisions of this agreement shall have the force and effect of law.

Approved June 30, 1902, ratified by the Creeks July, 1902, and proclaimed by the President August 8, 1902.

⁷ United States v. Shock (C. C.) 187 Fed. 862.

CHAPTER 49

ORIGINAL SEMINOLE ALLOTMENT AGREEMENT, APPROVED JULY 1, 1898 AND AMENDMENT THEREOF

(CHAPTER 542, 30 STAT. 567)

- § 680. Preamble to Seminole Agreement.
- 681. Allotment of Seminole Lands—Restrictions upon alienation.
- 682. Leases—Agricultural and mineral.
- 683. Former townsite act of Seminole Council ratified—Patents to issue when.
- 684. Appropriation for Seminoles.
- 685. Reservation for church purposes.
- 686. Patents to issue to Seminole allottees when tribal government ceases.
- 687. Homestead — Restrictions upon — Alienation and Exemption from Taxation.
- 688. Final disposition of Seminole affairs.
- 689. Jurisdiction conferred upon United States court.
- 690. General provisions.
- 691. Seminole government to expire and patents to be issued.
- 692. Seminole homestead to be inalienable during lifetime of allottee.

§ 680. Preamble to Seminole Agreement.—Whereas an agreement was made by Henry L. Dawes, Tams Bixby, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Needles, the Commission of the United States to the Five Civilized Tribes, and Allison L. Aylesworth, secretary, John F. Brown, Okchan Harjo, William Cully, K. N. Kinkehee, Thomas West, Thomas Factor, Seminole Commission, A. J. Brown, secretary, on the part of the Seminole Nation of Indians on December sixteenth, eighteen hundred and ninety-seven, as follows:

This agreement by and between the government of the United States, of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Frank C. Armstrong, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the government of the Seminole

Nation in Indian Territory, of the second part entered into on behalf of said government by its commission, duly appointed and authorized thereunto, viz, John F. Brown, Okchan Harjo, William Cully, K. N. Kinkehee, Thomas West, and Thomas Factor;

Witnesseth that in consideration of the mutual undertakings herein contained it is agreed as follows:

§ 681. Allotment of Seminole lands—Restrictions upon alienation.—All lands belonging to the Seminole Tribe of Indians shall be divided into three classes, designated as first, second, and third class; the first class to be appraised at five dollars, the second class at two dollars and fifty cents, and the third class at one dollar and twenty-five cents per acre, and the same shall be divided among the members of the tribe so that each shall have an equal share thereof in value, so far as may be, the location and fertility of the soil considered; giving to each the right to select his allotment so as to include any improvements thereon, owned by him at the time; and each allottee shall have the sole right of occupancy of the land so allotted to him, during the existence of the present tribal government, and until the members of said tribe shall have become citizens of the United States. Such allotments shall be made under the direction and supervision of the Commission to the Five Civilized Tribes in connection with a representative appointed by the tribal government; and the chairman of said Commission shall execute and deliver to each allottee a certificate describing therein the land allotted to him.

All contracts for sale, disposition, or encumbrance of any part of any allotment made prior to date of patent shall be void.

Any allottee may lease his allotment for any period not exceeding six years, the contract therefor to be executed in triplicate upon printed blanks provided by the tribal government, and before the same shall become effective it shall

are entitled to enrollment as provided by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.³

§ 665. Enrollment and descent where death before allotment of children living May 25, 1901.—[8]. All children who have not heretofore been listed for enrollment living May 25, 1901, born to citizens whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895 and entitled to enrollment as provided by the act of Congress approved March 1, 1901 (31 Stat. L. 861), shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die, before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.⁴

§ 666. Supplemental roll for certain children.—[9]. If the rolls of citizenship provided for by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), shall have been completed by said commission prior to the ratification of this agreement, the names of children entitled to enrollment under the provisions of sections 7 and 8 hereof shall be placed upon a supplemental roll of citizens of the Creek Nation, and said supplemental roll when approved by the Secretary of the Interior shall in all respects be held to be

³ See cases cited to section 6 of Creek Supplemental Agreement, being the section immediately preceding.

⁴ See authorities cited under section 663. .

a part of the final rolls of citizenship of said tribe: Provided, that the Dawes Commission be, and is hereby, authorized to add the following persons to the Creek roll: Nar-wal-le-pe-se, Mary Washington, Walter Washington, and Willie Washington, who are Creek Indians but those names were left off the roll through neglect on their part.

ROADS

§ 667. **Roads.**—[10]. Public highways or roads three rods in width, being one and one-half rods on each side of the section line, may be established along all section lines without any compensation being paid therefor; and all allottees, purchasers, and others shall take the title to such lands subject to this provision. And public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues, and to be paid by the Creek Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid in the same manner.

§ 668. **Townsites.**—[11]. In all instances of the establishment of townsites in accordance with the provisions of the Act of Congress approved May 31, 1900 (31 Stat. L. 231), or those of section 10 of the agreement ratified by Act of Congress approved March 1, 1901 (31 Stat. L. 861), authorizing the Secretary of the Interior, upon the recommendation of the Commission to the Five Civilized Tribes, at any time before allotment, to set aside and reserve from allotment any lands in the Creek Nation not exceeding 160 acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any rail-

road which shall be constructed, or be in process of construction, in or through said nation prior to the allotment of lands therein, any citizen who shall have previously selected such townsite, or any portion thereof, for his allotment, or who shall have been by reason of improvements therein entitled to select the same for his allotment, shall be paid by the Creek Nation the full value of his improvements thereon at time of the establishment of the townsite, under rules and regulations to be prescribed by the Secretary of the Interior: Provided, however, that such citizens may purchase any of said lands in accordance with the provisions of the Act of March 1, 1901 (31 Stat. L. 61): And provided further, that the lands which may hereafter be set aside and reserved for townsites upon recommendation of the Dawes Commission as herein provided shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such townsites, and not to exceed 640 acres for each townsite, and 10 per cent. of the net proceeds arising from the sale of that portion of the land within the townsite so selected by him, or which he was so entitled to select; and this shall be in addition to his right to receive from other lands an allotment of 160 acres.

CEMETERIES

§ 669. **Cemeteries.**—[12]. A cemetery other than a town cemetery included within the boundaries of an allotment shall not be desecrated by tillage or otherwise, but no interment shall be made therein except with the consent of the allottee, and any person desecrating by tillage or otherwise a grave or graves in a cemetery included within the boundaries of an allotment shall be guilty of a misdemeanor, and upon conviction be punished as provided in section 567 of Mansfield's Digest of the Statutes of Arkansas.

§ 670. **Cemeteries.**—[13]. Whenever the townsite surveyors of any town in the Creek Nation shall have selected

and located a cemetery, as provided in section 18 of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), the town authorities shall not be authorized to dispose of lots in such cemetery until payment shall have been made to the Creek Nation for land used for said cemetery, as provided in said act of Congress, and if the town authorities fail or refuse to make payment as aforesaid within one year of the approval of the plat of said cemetery by the Secretary of the Interior, the land so reserved shall revert to the Creek Nation and be subject to allotment. And for lands heretofore or hereafter designated as parks upon any plat or any townsite the town shall make payment into the treasury of the United States to the credit of the Creek Nation within one year at the rate of \$20 per acre, and if such payment be not made within that time the lands so designated as a park shall be platted into lots and sold as other town lots.

MISCELLANEOUS

§ 671. Tribal funds—Disposition of.—[14]. All funds of the Creek Nation not needed for equalization of allotments, including the Creek school fund, shall be paid out under direction of the Secretary of the Interior per capita to the citizens of the Creek Nation on the dissolution of the Creek tribal government.

§ 672. Certain reservations not affected.—[15]. The provision of section 24 of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), for the reservation of land for the six established Creek courthouses is hereby repealed.

§ 673. Restrictions upon alienation of allotted lands.—[16]. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the In-

terior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, inalienable, and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.

Selections of homesteads for minors, prisoners, convicts, incompetents and aged and infirm persons, who cannot select for themselves, may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him. The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the laws of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.⁵

⁵ *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *In re Lands of Five Civilized Tribes* (D. C.) 199 Fed. 811; *Reed v. Welty* (D. C.) 197 Fed. 419; *Moore v. Sawyer* (C. C.) 167 Fed. 826; *United States v. Jacobs*, 195 Fed. 707, 115 C. C. A. 507; *Alfrey v. Colbert*, 168 Fed. 231, 93 C. C. A. 517; *In re Washington's Estate* (Okl.) 128 Pac. 1079; *Texas Co. v. Henry*, 34 Okl. 342, 126 Pac. 224; *Rentle v. McCoy*, 35 Okl. 77, 128 Pac. 244; *Divine v. Harmon*, 30 Okl. 820, 121 Pac. 219; *Groom v. Wright*, 30 Okl. 652, 121 Pac. 215; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338; *Harris v. Lynde-Bowman-Darby Co.*, 29 Okl. 362, 116 Pac. 808; *Bragdon v. McShea*, 26 Okl. 35, 107 Pac. 916; *Blakemore v. Johnson*, 24 Okl. 544, 103 Pac. 554; *Baker v. Hammett*, 23 Okl. 480, 100 Pac. 1114; *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588.

§ 674. **Leases of allotted lands.**—[17]. Section 37 of the agreement ratified by said Act of March 1, 1901, is amended, and as so amended is re-enacted to read as follows:

“Creek citizens may rent their allotments, for strictly nonmineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes, and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotment shall not be liable to any tribal tax, but when cattle are introduced into the Creek Nation and grazed on lands not selected for allotment by citizens, the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section 2117 of the Revised Statutes of the United States shall not hereafter apply to Creek lands.” *

§ 675. **Cattle grazing regulated.**—[18]. When cattle are introduced into the Creek Nation to be grazed upon either lands not selected for allotment or upon lands allotted or selected for allotment the owner thereof, or the party or parties so introducing the same, shall first obtain a permit from the United States Indian agent, Union Agency,

* *Moore v. Sawyer* (C. C.) 167 Fed. 826; *Muskogee Land Co. v. Mullins*, 165 Fed. 179, 91 C. C. A. 213, 16 Ann. Cas. 387, affirming *Muskogee Land Co. v. Mullins*, 7 Ind. T. 189, 104 S. W. 586; *Morrison v. Burnette*, 154 Fed. 617, 83 C. C. A. 391; *Scherer v. Hulquist* (Okl.) 130 Pac. 544; *Groom v. Wright*, 30 Okl. 652, 121 Pac. 215; *Williams v. Williams*, 22 Okl. 672, 98 Pac. 909.

authorizing the introduction of such cattle. The application for said permit shall state the number of cattle to be introduced, together with a description of the same, and shall specify the lands upon which said cattle are to be grazed, and whether or not said lands have been selected for allotment. Cattle so introduced and all other live stock owned or controlled by noncitizens of the nation shall be kept upon inclosed lands, and if any such cattle or other live stock trespass upon lands allotted to or selected for allotment by any citizen of said nation, the owner thereof shall, for the first trespass, make reparation to the party injured for the true value of the damages he may have sustained, and for every trespass thereafter double damages, to be recovered with costs, whether the land upon which trespass is made is inclosed or not.

Any person who shall introduce any cattle into the Creek Nation in violation of the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than \$100, and shall stand committed until such fine and costs are paid, such commitment not to exceed one day for every \$2 of said fine and costs; and every day said cattle are permitted to remain in said nation without a permit for their introduction having been obtained shall constitute a separate offense.

§ 676. Each allottee to be put in possession.—[19]. Section 8 of the agreement ratified by said Act of March 1, 1901, is amended and as so amended is re-enacted to read as follows:

“The Secretary of the Interior shall, through the United States Indian agent in said territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land and remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided and receive certificate therefor, he shall be immediately thereupon so placed

in possession of his land, and during the continuance of the tribal government the Secretary of the Interior, through such Indian agent, shall protect the allottee in his right to possession against any and all persons claiming under any lease, agreement, or conveyance not obtained in conformity to law."

§ 677. Not to repeal original agreement except where in conflict.—[20]. This agreement is intended to modify and supplement the agreement ratified by said Act of Congress approved March 1, 1901, and shall be held to repeal any provision in that agreement or in any prior agreement, treaty, or law in conflict herewith.⁷

§ 678. Agreement to be binding when ratified.—[21]. This agreement shall be binding upon the United States and the Creek Nation, and upon all persons affected thereby when it shall have been ratified by Congress and the Creek National Council, and the fact of such ratification shall have been proclaimed as hereinafter provided.

§ 679. Submission to Creek Council.—[22]. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek Nation Council and submit this agreement, as ratified by Congress, to such council for its consideration, and if the agreement be ratified by the National Council, as provided in the constitution of the tribe, the principal chief shall transmit to the President of the United States a certified copy of the act of the council ratifying the agreement, and thereupon the President shall issue his proclamation making public announcement of such ratification; thenceforward all the provisions of this agreement shall have the force and effect of law.

Approved June 30, 1902, ratified by the Creeks July, 1902, and proclaimed by the President August 8, 1902.

⁷ United States v. Shock (C. C.) 187 Fed. 862.

CHAPTER 49

ORIGINAL SEMINOLE ALLOTMENT AGREEMENT, APPROVED JULY 1, 1898 AND AMENDMENT THEREOF

(CHAPTER 542, 30 STAT. 567)

- § 680. Preamble to Seminole Agreement.
- 681. Allotment of Seminole Lands—Restrictions upon alienation.
- 682. Leases—Agricultural and mineral.
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- 690. General provisions.
- 691. Seminole government to expire and patents to be issued.
- 692. Seminole homestead to be inalienable during lifetime of allottee.

§ 680. **Preamble to Seminole Agreement.**—Whereas an agreement was made by Henry L. Dawes, Tams Bixby, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Needles, the Commission of the United States to the Five Civilized Tribes, and Allison L. Aylesworth, secretary, John F. Brown, Okchan Harjo, William Cully, K. N. Kinkehee, Thomas West, Thomas Factor, Seminole Commission, A. J. Brown, secretary, on the part of the Seminole Nation of Indians on December sixteenth, eighteen hundred and ninety-seven, as follows:

This agreement by and between the government of the United States, of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Frank C. Armstrong, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the government of the Seminole

Nation in Indian Territory, of the second part entered into on behalf of said government by its commission, duly appointed and authorized thereunto, viz, John F. Brown, Okchan Harjo, William Cully, K. N. Kinkehee, Thomas West, and Thomas Factor;

Witnesseth that in consideration of the mutual undertakings herein contained it is agreed as follows:

§ 681. Allotment of Seminole lands—Restrictions upon alienation.—All lands belonging to the Seminole Tribe of Indians shall be divided into three classes, designated as first, second, and third class; the first class to be appraised at five dollars, the second class at two dollars and fifty cents, and the third class at one dollar and twenty-five cents per acre, and the same shall be divided among the members of the tribe so that each shall have an equal share thereof in value, so far as may be, the location and fertility of the soil considered; giving to each the right to select his allotment so as to include any improvements thereon, owned by him at the time; and each allottee shall have the sole right of occupancy of the land so allotted to him, during the existence of the present tribal government, and until the members of said tribe shall have become citizens of the United States. Such allotments shall be made under the direction and supervision of the Commission to the Five Civilized Tribes in connection with a representative appointed by the tribal government; and the chairman of said Commission shall execute and deliver to each allottee a certificate describing therein the land allotted to him.

All contracts for sale, disposition, or encumbrance of any part of any allotment made prior to date of patent shall be void.

Any allottee may lease his allotment for any period not exceeding six years, the contract therefor to be executed in triplicate upon printed blanks provided by the tribal government, and before the same shall become effective it shall

be approved by the principal chief and a copy filed in the office of the clerk of the United States court at Wewoka.¹

§ 682. Leases—Agricultural and mineral.—No lease of any coal, mineral, coal oil or natural gas within said nation shall be valid unless made with the tribal government, by and with the consent of the allottee and approved by the Secretary of the Interior.

Should there be discovered on any allotment any coal, mineral, coal oil, or natural gas, and the same should be operated so as to produce royalty, one-half of such royalty shall be paid to such allottee and the remaining half into the tribal treasury until extinguishment of tribal government, and the latter shall be used for the purpose of equalizing the value of allotments; and if the same be insufficient therefor, any other funds belonging to the tribe, upon extinguishment of tribal government, may be used for such purpose, so that each allotment may be made equal in value as aforesaid.

§ 683. Former townsite act of Seminole Council ratified—Patents to issue when.—The townsite of Wewoka shall be controlled and disposed of according to the provisions of an act of the General Council of the Seminole Nation, approved April 23d, 1897, relative thereto; and on extinguishment of the tribal government deeds of conveyance shall issue to owners of lots as herein provided for allottees; and all lots remaining unsold at that time may be sold in such manner as may be prescribed by the Secretary of the Interior.

§ 684. Appropriation for Seminoles.—Five hundred thousand dollars (\$500,000) of the funds belonging to the

¹ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *United States Express Co. v. Friedman*, 191 Fed. 673, 112 C. C. A. 219; *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okl. 425, 126 Pac. 723; *Stout v. Simpson*, 34 Okl. 129, 124 Pac. 754; *Godfrey v. Iowa Land & Trust Co.*, 21 Okl. 293, 95 Pac. 792.

Seminole, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent. interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Ema-haka academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country.

§ 685. **Reservation for church purposes.**—There shall also be excepted from allotment one-half acre for the use and occupancy of each of twenty-four churches, including those already existing and such others as may hereafter be established in the Seminole country, by and with consent of the general council of the nation; but should any part of same at any time cease to be used for church purposes, such part shall at once revert to the Seminole people and be added to the lands set apart for the use of said district schools.

One acre in each township shall be excepted from allotment, and the same may be purchased by the United States, upon which to establish schools for the education of children of noncitizens, when deemed expedient.

§ 686. **Patents to issue to Seminole allottees when tribal government ceases.**—When the tribal government shall cease to exist the principal chief last elected by said tribe shall execute, under his hand and the seal of the nation, and deliver to each allottee a deed conveying to him all the right, title, and interest of the said nation and the members thereof in and to the lands so allotted to him, and the Secretary of the Interior shall approve such deed, and the same shall thereupon operate as relinquishment of the right, title, and interest of the United States in and to the

land embraced in said conveyance, and as a guaranty by the United States of the title of said lands to the allottee; and the acceptance of such deed by the allottee shall be a relinquishment of his title to and interest in all other lands belonging to the tribe, except such as may have been excepted from allotment and held in common for other purposes.²

§ 687. Homestead—Restrictions upon—Alienation and exemption from taxation.—Each allottee shall designate one tract of forty acres, which shall, by the terms of the deed, be made inalienable and non-taxable as a homestead in perpetuity.³

§ 688. Final disposition of Seminole affairs.—All moneys belonging to the Seminoles remaining after equalizing the value of allotments as herein provided and reserving said sum of five hundred thousand dollars for school fund shall be paid per capita to the members of said tribe in three equal installments, the first to be made as soon as convenient after allotment and extinguishment of tribal government, and the others at one and two years, respectively. Such payments shall be made by a person appointed by the Secretary of the Interior who shall prescribe the amount of and approve the bond to be given by such person; and strict account shall be given to the Secretary of the Interior for such disbursements.

The loyal Seminole claim shall be submitted to the United States Senate, which shall make final determination of same, and, if sustained, shall provide for payment thereof within two years from date hereof.

There shall hereafter be held at the town of Wewoka, the

² *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

³ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Deming Inv. Co. v. United States*, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847.

present capital of the Seminole Nation, regular terms of the United States court as at other points in the judicial district of which the Seminole Nation is a part.

The United States agrees to maintain strict laws in the Seminole country against the introduction, sale, barter, or giving away of intoxicants of any kind or quality.

This agreement shall in no wise affect the provisions of existing treaties between the Seminole Nation and the United States, except in so far as it is inconsistent therewith.

§ 689. Jurisdiction conferred upon United States court.—The United States courts now existing, or that may hereafter be created, in Indian Territory, shall have exclusive jurisdiction of all controversies growing out of the title, ownership, occupation, or use of real estate owned by the Seminoles, and to try all persons charged with homicide, embezzlement, bribery, and embracery hereafter committed in the Seminole country, without reference to race or citizenship of the persons charged with such crime; and any citizen or officer of said nation charged with any such crime, if convicted, shall be punished as if he were a citizen or officer of the United States, and the courts of said nation shall retain all the jurisdiction which they now have, except as herein transferred to the courts of the United States.

§ 690. General provisions.—When this agreement is ratified by the Seminole Nation and the United States, the same shall serve to repeal all the provisions of the Act of Congress approved June seventh, eighteen hundred ninety-seven, in any manner affecting the proceedings of the general council of the Seminole Nation.

It being known that the Seminole Reservation is insufficient for allotments for the use of the Seminole people, upon which they, as citizens, holding in severalty, may reasonably and adequately maintain their families, the United States will make effort to purchase from the Creek Nation, at one dollar and twenty-five cents per acre, two hundred

thousand acres of land, immediately adjoining the eastern boundary of the Seminole reservation and lying between the North fork and South fork of the Canadian River, in trust for and to be conveyed by proper patent by the United States to the Seminole Indians, upon said sum of one dollar and twenty-five cents per acre being reimbursed to the United States by said Seminole Indians; the same to be allotted as herein provided for lands now owned by the Seminoles.

This agreement shall be binding on the United States when ratified by Congress and on the Seminole people when ratified by the general council of the Seminole Nation.

In witness whereof, the said commissioners have hereto affixed their names at Muskogee, Indian Territory, this sixteenth day of December, A. D. 1897.

(Signatures omitted.)

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the same be, and is hereby, ratified and confirmed, and all laws and parts of laws inconsistent therewith are hereby repealed.

Approved July 1, 1898.

§ 691. **Seminole government to expire and patents to be issued.**—[8]. That the tribal government of the Seminole Nation shall not continue longer than March fourth, nineteen hundred and six: Provided, that the Secretary of the Interior shall at the proper time furnish the principal chief with blank deeds necessary for all conveyances mentioned in the agreement with the Seminole Nation contained in the Act of July first, eighteen hundred and ninety-eight (Thirtieth Statutes, page five hundred and sixty-seven), and said principal chief shall execute and deliver said deeds to the Indian allottees as required by said act, and the deeds for allotment, when duly executed and approved, shall be recorded in the office of the Dawes Commission prior to

delivery and without expense to the allottee until further legislation by Congress, and such records shall have like effect as other public records.⁴

§ 692. **Seminole homestead to be inalienable during lifetime of allottee.**—Provided, further, that the homestead referred to in said act shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed for the allotment. A separate deed shall be issued for said homestead, and during the time the same is held by the allottee it shall not be liable for any debt contracted by the owner thereof.⁵

⁴ Extract from Indian Appropriation Act March 3, 1903, amending homestead provision of Seminole Agreement. 32 Stat. 1008, c. 994.

⁵ Extract from Indian Appropriation Act March 3, 1903, amending homestead provisions of Seminole Agreement. 32 Stat. 1008, c. 994.

CHAPTER 50

SEMINOLE SUPPLEMENTAL AGREEMENT OF OCTOBER 7, 1899, APPROVED JUNE 2, 1900

(CHAPTER 610, 31 STAT. 250)

§ 693. Preamble to Supplemental Seminole Agreement.

694. Tribal membership rolls.

695. Allotments to deceased members—Descent of.

696. Ratification of agreement.

§ 693. Preamble to Supplemental Seminole Agreement.¹

Whereas an agreement was made by Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, the commission of the United States to the Five Civilized Tribes, and John F. Brown and K. N. Kinkehee, commissioners on the part of the Seminole tribe of Indians, on the seventh day of October, eighteen hundred and ninety-nine, as follows:

This agreement by and between the government of the United States, of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Seminole Tribe of Indians, in Indian Territory, of the second part, entered into in behalf of said tribe by John F. Brown and K. N. Kinkehee, commissioners duly appointed and authorized thereunto, witnesseth:

§ 694. Tribal membership rolls.—First. That the Commission to the Five Civilized Tribes, in making the rolls of Seminole citizens, pursuant to the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, shall place on said rolls the names of all children born to Seminole citizens up to and including the thirty-

¹ Discussing general terms of Seminole Agreements: *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841.

first day of December, eighteen hundred and ninety-nine, and the names of all Seminole citizens then living; and the rolls so made, when approved by the Secretary of the Interior, as provided by said Act of Congress, shall constitute the final rolls of Seminole citizens, upon which the allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made, and to no other persons.

§ 695. Allotments to deceased members—Descent of.—Second. If any member of the Seminole Tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money, and other property to which he would be entitled if living, shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the state of Arkansas, and be allotted and distributed to them accordingly: Provided, that in all cases where such property would descend to the parents under said laws the same shall first go to the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father.²

§ 696. Ratification of agreement.—Third. This agreement to be ratified by the General Council of the Seminole Nation and by the Congress of the United States.

In witness whereof the said commissioners hereunto affix their names, at Muskogee, Indian Territory, this seventh day of October, eighteen hundred and ninety-nine.

(Signatures omitted.)

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the same be, and is hereby, ratified and confirmed, and all laws and parts of laws inconsistent therewith are hereby repealed.

Approved June 2, 1900.

² *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okl. 425, 126 Pac. 723; *Bruner v. Sanders*, 26 Okl. 673, 110 Pac. 730.

CHAPTER 51

SEMINOLE TOWNSITE ACT

- § 697. Commissioners appointed.
- 698. Authority of commission.
- 699. Compensation to occupants.
- 700. Commissioners authorized to sell or lease lots.
- 701. Commissioners required to keep record.
- 702. Appointment of officers authorized.
- 703. Wewoka made capitol of Seminole Nation.
- 704. Townsite act to take effect upon its passage.

§ 697. Commissioners appointed.—Be it enacted by the General Council of the Seminole Nation: Section 1. That A. J. Brown, Thomas McGeisey, Thomas Factor, W. L. Joseph, and Dorsey Fife be, and are hereby, appointed as townsite commissioners for the Seminole Nation, and their term of office shall continue for four years and until their successors are appointed by the general council and qualified.

The said commissioners shall each execute a bond in the sum of five thousand dollars, to be approved by the general council, for the faithful performance of their duty, and they, or either of them, may be impeached and removed from office, and fined or otherwise punished by the general council, for malfeasance or improper conduct while in office.

Before entering upon their duties the said commissioners shall elect one of their number as president and one as secretary. They shall keep a record of all their doings and transactions and make a report of the same to the general council once in each year.

§ 698. Authority of commission.—[2]. That said commission shall select a suitable tract or tracts of land in the Seminole Nation, not exceeding six hundred and forty acres, for a town, to be known and designated as Wewoka. And when selected the said commissioners shall cause the same to be surveyed and divided into lots, blocks, streets,

and alleys of suitable width and size for residence and building purposes, and have the same numbered and plat-
ted according to the usual plan adopted by the United States
for laying out and establishing townsites.

There shall also be set apart one block for public build-
ings and two additional blocks or squares, properly located,
for public parks.

§ 699. **Compensation to occupants.**—[3]. Should any
or all of the lands selected by said commission for the pur-
poses herein mentioned be owned, occupied, or claimed by
any member of the Seminole Nation for business, agri-
cultural, or grazing purposes, or as a home, or for any
other legitimate purpose, then and in that event the said
commission shall, before entering upon such lands for the
purpose of using them as a townsite, make and enter into a
contract or agreement with such person or persons for the
relinquishment of their right and title to the same, and in
consideration thereof the said commissioners shall have
the right, and they are hereby empowered, to grant and
relinquish to such person or persons owning, occupying, or
claiming said lands an interest in said town equivalent to
one-fourth the entire number of acres which they may
own, occupy, or claim: Provided, that such person or per-
sons shall have the right and privilege of selecting in said
town the said one-fourth interest, subject to the approval
of the said commission, which selection shall include any
buildings that may at the time belong to such person or
persons.

§ 700. **Commissioners authorized to sell or lease lots.**
—[4]. That a description of the tracts of land which may
be selected by said commissioners for the purpose afore-
said, according to the United States survey of the same,
shall be reported to the national council, with a plat of the
town, showing the survey of the same into lots, blocks,
streets, and alleys, and also the blocks or squares for parks
and public buildings, whereupon the president and secre-

tary of the said national council, with the approval of the principal chief of the Seminole Nation, shall convey the tracts of land so selected and reported in trust to the said commissioners, who shall have the general management of the said town.

The said commission shall have power to sell or lease the said town lots upon such terms and conditions and for such considerations as they may deem proper, and to execute leases as in their judgment may be for the best interests of the said town, the Seminole Nation, and people: Provided, that no sale shall be made to noncitizens, whether Indians by blood or otherwise, until the tribal organization as such shall cease to exist: And provided, that no transfer of the title of lots shall be made to any person or persons, except upon the condition that a building or buildings, or other valuable improvements, shall be erected thereon within six months from date of lease or purchase of such lot or lots: Provided, that said commissioners may in their discretion, for good cause shown, extend the time for the completion of such building, buildings, or improvements.

§ 701. Commissioners required to keep record.—[5]. That said commission shall keep a record of all lots and blocks sold, leased, or otherwise disposed of by them, and they shall pay over to the treasurer of the Seminole Nation once every six months the net proceeds of sales of the aforesaid three-fourths interest in said town: Provided, that the aforesaid one-fourth interest belonging to person or persons who may be entitled to the same as aforesaid shall be conveyed to such person or persons aforesaid, and said person or persons shall have the exclusive management and control of the same, and may lease, sell, or convey the same upon the terms and conditions as hereinbefore provided for the disposition of other lots and blocks. The said commissioners shall be allowed pay for their services in the management of the town, and on sales of lots five per centum of all moneys that may be received on account of such sales or leases.

§ 702. **Appointment of officers authorized.**—[6]. That said commissioners are hereby authorized to appoint a city marshal for the said town of Wewoka, who shall have the power to arrest all offenders and disturbers of the peace and protect the lives and property of the people. The said marshal shall execute a bond in such sum as said commission may prescribe for the faithful performance of his duty, and he may be removed from office by said commission for good and sufficient cause. The said commission shall also have the right to appoint a city attorney and police judge for such time and upon such terms and conditions as they may prescribe. They shall also have the power, when the population of said town is two hundred or more, to organize a city government for the said town and provide for the election of a mayor and city council in such manner and upon such terms and conditions as they may prescribe, and they shall fix the salaries or designate the fees to be paid to each of the city officers, subject to the approval of the national council. The said commission shall have the right to levy and collect taxes in said town for the purpose of maintaining a city government and making such improvements as they may deem necessary: Provided, that no taxes shall be levied or collected on the lots in said town during the existence of the Indian government.

§ 703. **Wewoka made capital of Seminole Nation.**—[7]. That the town of Wewoka shall, and is hereby, declared to be the capital and seat of government of the Seminole Nation, and shall remain as such so long as the present tribal organization exists.

§ 704. **Townsite act to take effect upon its passage.**—[8]. This act shall take effect and be in force from and after its passage.

Approved April 23, 1897.

JOHN F. BROWN,
Principal Chief.

(See section 683.)

CHAPTER 52

ACT APRIL 26, 1906—AN ACT TO PROVIDE FOR THE FINAL DISPOSITION OF THE AFFAIRS OF THE FIVE CIVILIZED TRIBES IN THE INDIAN TERRITORY, AND FOR OTHER PURPOSES

(CHAPTER 1876, 34 STAT. 137)

- § 705. Citizenship.
- 706. Citizenship.
- 707. Freedmen.
- 708. Transfers from freedmen to tribal rolls prohibited.
- 709. Patents or deeds to vest title in heirs or assignee.
- 710. Governor or principal chief may be removed.
- 711. Certain reservations authorized.
- 712. Records—How preserved.
- 713. Controversies referred to Court of Claims.
- 714. Secretary to take charge of tribal schools.
- 715. Secretary to collect tribal revenues.
- 716. Secretary to sell certain tribal lands and property.
- 717. Coal and asphalt lands reserved.
- 718. Conveyance of land reserved to railway companies.
- 719. Secretary to sell buildings and property of tribes.
- 720. Freedmen—Certain preference rights given to.
- 721. Disposition of tribal funds.
- 722. Secretary authorized to collect tribal funds.
- 723. Extension of restrictions on alienation by full-blood allottees.
- 724. Leases by full-blood allottees.
- 725. Conveyances before patent not to be held invalid.
- 726. Lands—When subject to taxation.
- 727. Allottees—May lease when.
- 728. Allotted lands in default of heirs to revert.
- 729. Authorizing alienation of inherited lands.
- 730. Wills—When may be made.
- 731. Public Roads—Choctaw, Chickasaw and Seminole Nations.
- 732. Right of eminent domain conferred.
- 733. Street improvements authorized.
- 734. Taxation of railway property authorized.
- 735. Tribal lands not to become public lands.
- 736. Tribal existence continued.
- 737. Acts in conflict with repealed.

§ 705. **Citizenship.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that after the approval of this act no person shall be enrolled as a citizen or freedman of the

Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes of Indians in the Indian Territory, except as herein otherwise provided, unless application for enrollment was made prior to December first, nineteen hundred and five, and the records in charge of the Commissioner to the Five Civilized Tribes shall be conclusive evidence as to the fact of such application; and no motion to reopen or reconsider any citizenship case, in any of said tribes, shall be entertained unless filed with the Commissioner to the Five Civilized Tribes within sixty days after the date of the order or decision sought to be reconsidered except as to decisions made prior to the passage of this act, in which cases such motion shall be made within sixty days after the passage of this act: Provided, that the Secretary of the Interior may enroll persons whose names appear upon any of the tribal rolls and for whom the records in charge of the Commissioner to the Five Civilized Tribes show application was made prior to December first, nineteen hundred and five, and which was not allowed solely because not made within the time prescribed by law.¹

§ 706. Citizenship.—[2]. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek Tribes, or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled. If any citizen of the Cherokee Tribe shall fail to receive the full quantity of land to which he is entitled as an allotment, he shall be paid out of any of the funds of such tribe a sum equal to twice the appraised value of the amount of land thus deficient. The provisions of

¹ *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249, 29 Sup. Ct. 62, 53 L. Ed. 168.

section nine of the Creek Agreement ratified by Act approved March first, nineteen hundred and one, authorizing the use of funds of the Creek Tribe for equalizing allotments, are hereby restored and re-enacted, and after the expiration of nine months from the date of the original selection of an allotment of land in the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, and after the expiration of six months from the passage of this act as to allotments heretofore made, no contest shall be instituted against such allotment: Provided, that the rolls of the tribes affected by this act shall be fully completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date: Provided further, that nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States: Provided, that nothing herein shall apply to the intermarried whites in the Cherokee Nation, whose cases are now pending in the Supreme Court of the United States.²

§ 707. **Freedmen.** — [3]. That the approved roll of Creek freedmen shall include only those persons whose names appear on the roll prepared by J. W. Dunn, under authority of the United States prior to March fourteenth, eighteen hundred and sixty-seven, and their descendants born since said roll was made, and those lawfully admitted to citizenship in the Creek Nation subsequent to the date of the preparation of said roll, and their descendants born since such admission, except such, if any, as have heretofore

² *Gritts v. Fisher*, 224 U. S. 640, 32 Sup. Ct. 580, 56 L. Ed. 928; *United States ex rel. Lowe v. Fisher*, 223 U. S. 95, 32 Sup. Ct. 196, 56 L. Ed. 364; *Cherokee Nation & United States v. Whitmire*, 223 U. S. 108, 32 Sup. Ct. 200, 56 L. Ed. 370; *Fleming v. McCurtain*, 215 U. S. 57, 30 Sup. Ct. 16, 54 L. Ed. 88; *Muskrat v. United States*, 219 U. S. 346, 31 Sup. Ct. 250, 55 L. Ed. 246.

been enrolled and their enrollment approved by the Secretary of the Interior.

The roll of Cherokee freedmen shall include only such persons of African descent, either free colored or the slaves of Cherokee citizens and their descendants, who were actual personal bona fide residents of the Cherokee Nation August eleventh, eighteen hundred and sixty-six, or who actually returned and established such residence in the Cherokee Nation on or before February eleventh, eighteen hundred and sixty-seven; but this provision shall not prevent the enrollment of any person who has heretofore made application to the Commission to the Five Civilized Tribes or its successor and has been adjudged entitled to enrollment by the Secretary of the Interior.

Lands allotted to freedmen of the Choctaw and Chickasaw Tribes shall be considered "homesteads," and shall be subject to all the provisions of this or any other act of Congress applicable to homesteads of citizens of the Choctaw and Chickasaw Tribes.^a

§ 708. **Transfers from freedmen to tribal rolls prohibited.**—[4]. That no name shall be transferred from the approved freedmen, or any other approved rolls of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, to the roll of citizens by blood, unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as a citizen by blood was made within the time prescribed by law by or for the party seeking the transfer, and said records shall be conclusive evidence as to the fact of such application, unless it be shown by documentary evidence that the Commission to the Five Civilized Tribes actually received such application within the time prescribed by law.

§ 709. **Patents or deeds to vest title in heirs or assignee.**—[5]. That all patents or deeds to allottees in any of the

^a United States ex rel. Lowe v. Fisher, 223 U. S. 95, 32 Sup. Ct. 196, 56 L. Ed. 364.

Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life, and all patents heretofore issued, where the allottee died before the same became effective, shall be given like effect; and all patents or deeds to allottees and other conveyances affecting lands of any of said tribes shall be recorded in the office of the Commissioner to the Five Civilized Tribes, and when so recorded shall convey legal title, and shall be delivered under the direction of the Secretary of the Interior to the party entitled to receive the same: Provided, the provisions of this section shall not affect any rights involved in contests pending before the Commissioner to the Five Civilized Tribes or the Department of the Interior at the date of the approval of this act.⁴

§ 710. Governor or principal chief may be removed.— [6]. That if the principal chief of the Choctaw, Cherokee, Creek, or Seminole Tribe, or the governor of the Chickasaw tribe shall refuse or neglect to perform the duties devolving upon him, he may be removed from office by the President of the United States, or if any such executive become permanently disabled, the office may be declared vacant by the President of the United States, who may fill any vacancy arising from removal, disability or death of the incumbent, by appointment of a citizen by blood of the tribe.

⁴ Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; Mullen v. United States, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; Goat v. United States, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; Deming Inv. Co. v. United States, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; Shulthis v. McDougal, 170 Fed. 529, 95 C. C. A. 615, reversing Shulthis v. MacDougal, 162 Fed. 331; Shulthis v. McDougal, 225 U. S. 561, 32 Sup. Ct. 704, 56 L. Ed. 1205.

If any such executive shall fail, refuse or neglect, for thirty days after notice that any instrument is ready for his signature, to appear at a place to be designated by the Secretary of the Interior and execute the same, such instrument may be approved by the Secretary of the Interior without such execution, and when so approved and recorded shall convey legal title, and such approval shall be conclusive evidence that such executive or chief refused or neglected after notice to execute such instrument.

Provided, that the principal chief of the Seminole Nation is hereby authorized to execute the deeds to allottees in the Seminole Nation prior to the time when the Seminole government shall cease to exist.⁵

§ 711. **Certain reservations authorized.**—[7]. That the Secretary of the Interior shall, by written order, within ninety days from the passage of this act, segregate and reserve from allotment sections one, two, three, four, five, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, the east half of section sixteen, and the northeast quarter of section six, in township nine south, range twenty-six east, and sections five, six, seven, eight, seventeen, eighteen, and the west half of section sixteen, in township nine south, range twenty-seven east, Choctaw Nation Indian Territory, except such portions of said lands upon which substantial, permanent, and valuable improvements were erected and placed prior to the passage of this act and not for speculation, but by members and freedmen of the tribes actually themselves and for themselves for allotment purposes, and where such identical members or freedmen of said tribes now desire to select same as portions of their allotments, and the action of the Secretary of the Interior in making such segregation shall be conclusive. The Secretary of the Interior shall also cause to be estimated and appraised the standing pine timber on all of said land, and the land segre-

⁵ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841.

gated shall not be allotted, except as hereinbefore provided, to any member or freedman of the Choctaw and Chickasaw Tribes. Said segregated land and the pine timber thereon shall be sold and disposed of at public auction, or by sealed bids for cash, under the direction of the Secretary of the Interior.

§ 712. **Records—How preserved.**—[8]. That the records of each of the land offices in the Indian Territory, should such office be hereafter discontinued, shall be transferred to and kept in the office of the clerk of the United States court in whose district said records are now located. The officer having custody of any of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, and the disposition of the land and other property of said tribes, upon proper application and payment of such fees as the Secretary of the Interior may prescribe, may make certified copies of such records, which shall be evidence equally with the originals thereof; but fees shall not be demanded for such authenticated copies as may be required by officers of any branch of the government nor for such unverified copies as such officer, in his discretion, may deem proper to furnish. Such fees shall be paid to bonded officers or employees of the government, designated by the Secretary of the Interior, and the same or so much thereof as may be necessary may be expended under the direction of the Secretary of the Interior for the purposes of this section, and any unexpended balance shall be deposited in the treasury of the United States, as are other public moneys.

§ 713. **Controversies referred to Court of Claims.**—[9]. The disbursements, in the sum of one hundred and eighty-six thousand dollars, to and on account of the loyal Seminole Indians, by James E. Jenkins, special agent appointed by the Secretary of the Interior, and by A. J. Brown as administrator de bonis non, under an Act of Congress approved May thirty-first, nineteen hundred, appropriating

said sum, be and the same are hereby, ratified and confirmed: Provided, that this shall not prevent any individual from bringing suit in his own behalf to recover any sum really due him.

That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws.

§ 714. **Secretary to take charge of tribal schools.**—[10]. That the Secretary of the Interior is hereby authorized and directed to assume control and direction of the schools in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes, with the lands and all school property pertaining thereto, March fifth, nineteen hundred and six, and to conduct such schools under rules and regulations to be prescribed by him, retaining tribal educational officers, subject to dismissal by the Secretary of the Interior, and the present system so far as practicable, until such time as a public school system shall have been established under territorial or state government, and proper provision made thereunder for the education of the Indian children of said tribes, and he is hereby authorized and directed to set aside a sufficient amount of any funds, invested or otherwise, in the treasury of the United States, belonging to said tribes, including the royalties on coal and asphalt in the Choctaw and Chickasaw Nations, to defray all the necessary

expenses of said schools, using, however, only such portion of said funds of each tribe as may be requisite for the schools of that tribe, not exceeding in any one year for the respective tribes the amount expended for the scholastic year ending June thirtieth, nineteen hundred and five; and he is further authorized and directed to use the remainder, if any, of the funds appropriated by the Act of Congress approved March third, nineteen hundred and five, "for the maintenance, strengthening, and enlarging of the tribal schools of the Cherokee, Creek, Choctaw, Chickasaw and Seminole Nations," unexpended March fourth, nineteen hundred and six, including such fees as have accrued or may hereafter accrue under the Act of Congress approved February nineteenth, nineteen hundred and three, Statutes at Large, volume thirty-two, page eight hundred and forty-one. which fees are hereby appropriated, in continuing such schools as may have been established, and in establishing such new schools as he may direct, and any of the tribal funds so set aside remaining unexpended when a public school system under a future state or territorial government has been established, shall be distributed per capita among the citizens of the nations, in the same manner as other funds.

§ 715. **Secretary to collect tribal revenues.**—[11]. That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States treasury belonging to said tribes. All such claims arising before dissolution of the tribal governments shall be presented to

the Secretary of the Interior within six months after such dissolution, and he shall make all rules and regulations necessary to carry this provision into effect and shall pay all expenses incident to the investigation of the validity of such claims or indebtedness out of the tribal funds: Provided, that all taxes accruing under tribal laws or regulations of the Secretary of the Interior shall be abolished from and after December thirty-first, nineteen hundred and five, but this provision shall not prevent the collection after that date nor after dissolution of the tribal government of all such taxes due up to and including December thirty-first, nineteen hundred and five, and all such taxes levied and collected after the thirty-first day of December, nineteen hundred and five, shall be refunded.

Upon dissolution of the tribal governments, every officer, member, or representative of said tribes, respectively, having in his possession, custody, or control any money or other property of any tribe shall make full and true account and report thereof to the Secretary of the Interior, and shall pay all money of the tribe in his possession, custody, or control, and shall deliver all other tribal property so held by him, to the Secretary of the Interior, and if any person shall willfully and fraudulently fail to account for all such money and property so held by him, or to pay and deliver the same as herein provided for sixty days from dissolution of the tribal government, he shall be deemed guilty of embezzlement and upon conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment not exceeding five years, or by both such fine and imprisonment, according to the laws of the United States relating to such offense, and shall be liable in civil proceedings to be prosecuted in behalf of and in the name of the tribe for the amount or value of the money or property so withheld.

§ 716. **Secretary to sell certain tribal lands and property.**—[12]. That the Secretary of the Interior is authorized

to sell, upon such terms and under such rules and regulations as he may prescribe, all lots in towns in the Choctaw and Chickasaw Nations reserved from appraisement and sale for use in connection with the operation of coal and asphalt mining leases or for the occupancy of miners actually engaged in working for lessees operating coal and asphalt mines, the proceeds arising from such sale to be deposited in the treasury of the United States as are other funds of said tribes.

If the purchaser of any town lot sold under the provisions of law regarding the sale of townsites in the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Nations fail for sixty days after approval hereof to pay the purchase price or any installment thereof then due, or shall fail for thirty days to pay the purchase price or any installment thereof falling due hereafter, he shall forfeit all rights under his purchase, together with all money paid thereunder, and the Secretary of the Interior may cause the lots upon which such forfeiture is made to be resold at public auction for cash, under such rules and regulations as he may prescribe. All municipal corporations in the Indian Territory are hereby authorized to vacate streets and alleys, or parts thereof, and said streets and alleys, when vacated, shall revert to and become the property of the abutting property owners.

§ 717. **Coal and asphalt lands reserved.**—[13]. That all coal and asphalt lands whether leased or unleased shall be reserved from sale under this act until the existing leases for coal and asphalt lands shall have expired or until such time as may be otherwise provided by law.

§ 718. **Conveyance of land reserved to railway companies.**—[14]. That the lands in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Nations reserved from allotment or sale under any act of Congress for the use or benefit of any person, corporation, or organization shall be conveyed to the person, corporation, or organization entitled thereto: Provided, that if any tract or parcel thus re-

served shall before conveyance thereof be abandoned for the use for which it was reserved by the party in whose interest the reservation was made, such tract or parcel shall revert to the tribe and be disposed of as other surplus lands thereof: Provided further, that this section shall not apply to land reserved from allotment because of the right of any railroad or railway company therein in the nature of an easement for right of way, depot, station grounds, water stations, stock yards or other uses connected with the maintenance and operation of such company's railroad, title to which tracts may be acquired by the railroad or railway company under rules and regulations to be prescribed by the Secretary of the Interior at a valuation to be determined by him; but if any such company shall fail to make payment within the time prescribed by the regulations or shall cease to use such land for the purpose for which it was reserved, title thereto shall thereupon vest in the owner of the legal subdivision of which the land so abandoned is a part, except lands within a municipality the title to which, upon abandonment, shall vest in such municipality.

The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation are, with the approval of the Secretary of the Interior, hereby authorized and directed to issue patents to the Murrow Indian Orphans' Home, a corporation of Atoka, Indian Territory, in all cases where tracts have been allotted under the direction of the Secretary of the Interior for the purpose of allowing the allottees to donate the tract so allotted to said Murrow Indian Orphans' Home.

In all cases where enrolled citizens of either the Choctaw or Chickasaw Tribe have taken their homestead and surplus allotment and have remaining over an unallotted right to less than ten dollars on the basis of the allotment value of said lands, such unallotted right may be conveyed by the owners thereof to the Murrow Indian Orphans' Home

aforesaid; and whenever said conveyed rights shall amount in the aggregate to as much as ten acres of average allottable land, land to represent the same shall be allotted to the said Murrow Indian Orphans' Home, and certificate and patent shall issue therefor to said Murrow Indian Orphans' Home.

And there is hereby authorized to be conveyed to said Murrow Indian Orphans' Home, in the manner hereinbefore prescribed for the conveyance of land, the following described lands in the Choctaw and Chickasaw Nations, to wit: Sections eighteen and nineteen in township two north, range twelve east; the south half of the northeast quarter, the northeast quarter of the northeast quarter, the south half of the northwest quarter of the northeast quarter, the south half of the southeast quarter, the northeast quarter of the southeast quarter, the south half of the northwest quarter of the southeast quarter, the northeast quarter of the northwest quarter of the southeast quarter, the northeast quarter of the southeast quarter of the southwest quarter, and the northwest quarter of the northwest quarter of section twenty-four, and the northwest quarter of the southeast quarter, the north half of the southwest quarter of the southeast quarter, the south half of the southwest quarter of the southwest quarter, the northeast quarter of the southwest quarter of the southwest quarter, and the southeast quarter of the northwest quarter of the southwest quarter of section twenty-three, and the southwest quarter of the southwest quarter of the southeast quarter of section twenty-six, and the southeast quarter of the northwest quarter of the northwest quarter, the south half of the northeast quarter of the northwest quarter, the northeast quarter of the northeast quarter of the northwest quarter, and the east half of the southeast quarter of the northwest quarter of section twenty-five, all in township two north, range eleven east, containing one thousand seven hundred and ninety acres, as shown by the government survey, for the purpose of the said Home.

§ 719. Secretary to sell buildings and property of tribes.—[15]. The Secretary of the Interior shall take possession of all buildings now or heretofore used for governmental, school, and other tribal purposes, together with the furniture therein and the land appertaining thereto, and appraise and sell the same at such time and under such rules and regulations as he may prescribe, and deposit the proceeds, less expenses incident to the appraisement and sale, in the treasury of the United States to the credit of the respective tribes: Provided, that in the event said lands are embraced within the geographical limits of a state or territory of the United States such state or territory or any county or municipality therein shall be allowed one year from date of establishment of said state or territory within which to purchase any such lands and improvements within their respective limits at not less than the appraised value. Conveyances of lands disposed of under this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances.

§ 720. Freedmen—Certain preference rights given to.—[16]. That when allotments as provided by this and other acts of Congress have been made to all members and freedmen of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes, the residue of lands in each of said nations not reserved or otherwise disposed of shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the proceeds of such sales deposited in the United States treasury to the credit of the respective tribes. In the disposition of the unallotted lands of the Choctaw and Chickasaw Nations each Choctaw and Chickasaw freedman shall be entitled to a preference right, under such rules and regulations as the Secretary of the Interior may prescribe, to purchase at the appraised value enough land to equal with that already allotted to him forty acres in area. If any such purchaser fails to make payment

within the time prescribed by said rules and regulations, then such tract or parcel of land shall revert to the said Indian tribes and be sold as other surplus lands thereof. The Secretary of the Interior is hereby authorized to sell, whenever in his judgment it may be desirable, any of the unallotted land in the Choctaw and Chickasaw Nations, which is not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding six hundred and forty acres to any one person, for a fair and reasonable price, not less than the present appraised value. Conveyances of lands sold under the provisions of this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances: Provided further, that agricultural lands shall be sold in tracts of not exceeding one hundred and sixty acres to any one person.

§ 721. **Disposition of tribal funds.**—[17]. That when the unallotted lands and other property belonging to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes of Indians have been sold and the moneys arising from such sales or from any other source whatever have been paid into the United States treasury to the credit of said tribes, respectively, and when all the just charges against the funds of the respective tribes have been deducted therefrom, any remaining funds shall be distributed per capita to the members then living and the heirs of deceased members whose names appear upon the finally approved rolls of the respective tribes, such distribution to be made under rules and regulations to be prescribed by the Secretary of the Interior.

§ 722. **Secretary authorized to collect tribal funds.**—[18]. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, respectively, either before or after the dissolution of the tribal governments, for the collection of

any moneys or recovery of any land claimed by any of said tribes, whether such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits: Provided, that proceedings to which any of said tribes is a party pending before any court or tribunal at the date of dissolution of the tribal governments shall not be thereby abated or in any wise affected, but shall proceed to final disposition.

Where suit is now pending, or may hereafter be filed in any United States court in the Indian Territory, by or on behalf of any one or more of the Five Civilized Tribes to recover moneys claimed to be due and owing to such tribe, the party defendants to such suit shall have the right to set up and have adjudicated any claim it may have against such tribe; and any balance that may be found due by any tribe or tribes shall be paid by the treasurer of the United States out of any funds of such tribe or tribes upon the filing of the decree of the court with him.*

§ 723. **Extension of restrictions upon alienation by full-blood allottees.**—[19]. That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole Tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of

* *United States v. Rea-Read Mill & Elevator Co.* (C. C.) 171 Fed. 501; *United States v. Dowden* (C. C.) 194 Fed. 475, reversed in principle as to lands allotted in name of Choctaw-Chickasaw allottee, by *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834.

citizens of said tribes approved by the Secretary of the Interior:⁷

§ 724. **Leases by full-blood allottees.**—[19]. Provided, however, that such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof of such inability, may authorize the leasing of such homestead under such rules and regulations:⁸

§ 725. **Conveyances before patent not to be held invalid.**—[19]. Provided further, that conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed; but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided; and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby, declared void:⁹

⁷ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Heckman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *United States v. Comet Oil & Gas Co.* (C. C.) 187 Fed. 675; *United States v. Shock* (C. C.) 187 Fed. 862; *Id.* (C. C.) 187 Fed. 870; *Frame v. Bivens* (C. C.) 189 Fed. 785; *Reed v. Welty* (D. C.) 197 Fed. 419; *Bartlett v. United States* (C. C. A.) 203 Fed. 410.

⁸ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *United States v. Comet Oil & Gas Co.* (C. C.) 187 Fed. 674; *Jennings v. Wood*, 192 Fed. 507, 112 C. C. A. 657; *Morrison v. Burnett*, 154 Fed. 617, 83 C. C. A. 391; *Cowles v. Lee* (Okl.) 128 Pac. 688; *Kol-*

⁹ *Mullen v. United States*, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Casey v. Bingham* (Okl.) 132 Pac. 663.

§ 726. **Lands—When subject to taxation.**—[19]. Provided, further, that all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee.¹⁰

§ 727. **Allottees—May lease when.**—[20]. That after the approval of this act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads, of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes shall be in writing and subject to approval by the Secretary of the Interior and shall be absolutely void and of no effect without such approval: Provided, that allotments of minors and incompetents may be rented or leased under order of the proper court: Provided further, that all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory.¹¹

§ 728. **Allotted lands in default of heirs to revert.**—[21]. That if any allottee of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes die intestate without widow, heir or heirs, or surviving spouse, seized of all or any portion of his allotment prior to the final distribution of the tribal property, and such fact shall be known by the Secre-

achny v. Galbreath, 26 Okl. 772, 110 Pac. 902, 38 L. R. A. (N. S.) 451; Eldred v. Okmulgee Loan & Trust Co., 22 Okl. 742, 98 Pac. 929; Barnes v. Stonebraker, 28 Okl. 75, 113 Pac. 903.

¹⁰ United States v. Shock (C. C.) 187 Fed. 862; Id. (C. C.) 187 Fed. 870.

¹¹ Tiger v. Western Inv. Co., 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; United States v. Comet Oil & Gas Co. (C. C.) 187 Fed. 674; Jennings v. Wood, 192 Fed. 507, 112 C. C. A. 657; Morrison v. Burnett, 154 Fed. 617, 83 C. C. A. 391; Cowles v. Lee (Okl.) 128 Pac. 688; Kolachny v. Galbreath, 26 Okl. 772, 110 Pac. 902, 38 L. R. A. (N. S.) 451; Eldred v. Okmulgee Loan & Trust Co., 22 Okl. 742, 98 Pac. 929; Barnes v. Stonebraker, 28 Okl. 75, 113 Pac. 903; Scott v. Signal Oil Co. (Okl.) 128 Pac. 694; Davis v. Selby Oil & Gas Co., 35 Okl. 254, 128 Pac. 1083.

tary of the Interior, the lands allotted to him shall revert to the tribe and be disposed of as herein provided for surplus lands; but if the death of such allottee be not known by the Secretary of the Interior before final distribution of the tribal property, the land shall escheat to and vest in such state or territory as may be formed to include said lands. That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settlement in the Choctaw country and within the period prescribed by law for making such proof may within sixty days from the passage of this act appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws; and the decision of the Commissioner to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed.

§ 729. Authorizing alienation of inherited lands.—[22]. That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.¹²

¹² *Shulthis v. McDougal*, 225 U. S. 561, 32 Sup. Ct. 704, 56 L. Ed. 1205; *Harris v. Gale* (C. C.) 188 Fed. 712; *United States v. Shock*

§ 730. **Wills—When may be made.**—[23]. Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interest therein: Provided, that no will of a full-blood Indian devising real estate shall be valid, if such last will and testament disinherits the parent, wife, spouse, or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian Territory, or a United States commissioner.¹³

§ 731. **Public roads—Choctaw, Chickasaw and Seminole Nations.**—[24]. That in the Choctaw, Chickasaw, and Seminole Nations public highways or roads two rods in width, being one rod on each side of the section line, may be established on all section lines; and all allottees, purchasers, and others shall take title to such land subject to this provision, and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, such damages accruing prior to the inauguration of a state government shall be determined under the direction of the Secretary of the Interior and be paid for from the funds of said tribes, respectively.¹⁴

All expenses incident to the establishment of public highways or roads in the Creek, Cherokee, Choctaw, Chickasaw, and Seminole Nations, including clerical hire, per diem, salary, and expenses of viewers, appraisers, and others, shall be paid under the direction of the Secretary of the Interior from the funds of the tribe or nation in which such public highways or roads are established. Any person, firm, or corporation obstructing any public highway or road, and who shall fail, neglect, or refuse for a period of

(C. C.) 187 Fed. 862; *Id.* (C. C.) 187 Fed. 870; *Shulthis v. McDougal*, 170 Fed. 529, 95 C. C. A. 615; *Western Inv. Co. v. Tiger*, 21 Okl. 630, 96 Pac. 602, reversed in *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Redwine v. Ansley*, 32 Okl. 317, 122 Pac. 679.

¹³ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *United States v. Shock*, 187 Fed. 862; *Id.* (C. C.) 187 Fed. 870.

¹⁴ *Good v. Keel*, 29 Okl. 325, 116 Pac. 777.

ten days after notice to remove or cause to be removed any and all obstructions from such public highway or road, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding ten dollars per day for each and every day in excess of said ten days which said obstruction is permitted to remain: Provided, however, that notice of the establishment of public highways or roads need not be given to allottees or others, except in cases where such public highways or roads are obstructed, and every person obstructing any such public highway or road, as aforesaid, shall also be liable in a civil action for all damages sustained by any person who has in any manner whatever been damaged by reason of such obstruction.

§ 732. Right of eminent domain conferred.—[25]. That any light, or power company doing business within the limits of the Indian Territory, in compliance with the laws of the United States that are now or may be in force therein, be, and the same are hereby, invested and empowered with the right of locating, constructing, owning, operating, using, and maintaining canals, reservoirs, auxiliary steam works, and a dam or dams across any nonnavigable stream within the limits of said Indian Territory, for the purpose of obtaining a sufficient supply of water to manufacture and generate water, electric, or other power, light, and heat and to utilize and transmit and distribute such power, light, and heat to other places for its own use or other individuals or corporations, and the right of locating, constructing, owning, operating, equipping, using, and maintaining the necessary pole lines and conduits for the purpose of transmitting and distributing such power, light, and heat to other places within the limits of said Indian Territory.

That the right to locate, construct, own, operate, use, and maintain such dams, canals, reservoirs, auxiliary steam works, pole lines, and conduits in or through the Indian Territory, together with the right to acquire, by condemna-

tion, purchase or agreement between the parties, such land as it may deem necessary for the locating, constructing, owning, operating, using, and maintaining of such dams, canals, reservoirs, auxiliary steam works, pole lines, and conduits in or through any land held by any Indian tribe or nation, person, individual, corporation, or municipality in said Indian Territory, or in or through any lands in said Indian Territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee, with full power of alienation, is hereby granted to any company complying with the provisions of this act: Provided, that the purchase from and agreements with individual Indians, where the right of alienation has not theretofore been granted by law, shall be subject to approval by the Secretary of the Interior.

In case of the failure of any light, or power company to make amicable settlement with any individual owner, occupant, allottee, tribe, nation, corporation, or municipality for any lands or improvements sought to be condemned or appropriated under this act all compensation and damages to be paid to the dissenting individual owner, occupant, allottee, tribe, nation, corporation, or municipality by reason of the appropriation and condemnation of said lands and improvements shall be determined as provided in sections fifteen and seventeen of an Act of Congress entitled "An act to grant a right of way through Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for other purposes," approved February twenty-eighth, nineteen hundred and two (Public Numbered Twenty-Six), and all such proceedings hereunder shall conform to said sections, except that sections three and four of said act shall have no application, and except that hereafter the plats required to be filed by said act shall be filed with the Secretary of the Interior and with the Commissioner to the Five Civilized Tribes, and where the words "Principal Chief or Governor" of any tribe or nation

occur in said act, for the purpose of this act there is inserted the words Commissioner to the Five Civilized Tribes. Whenever any such dam or dams, canals, reservoirs and auxiliary steam works, pole lines and conduits are to be constructed within the limits of any incorporated city or town in the Indian Territory, the municipal authorities of such city or town shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such cities and towns: Provided, that all rights granted hereunder shall be subject to the control of the future territory or state within which the Indian Territory may be situated.

§ 733. Street improvements authorized.—[26]. That in addition to the powers now conferred by law, all municipalities in the Indian Territory having a population of over two thousand to be determined by the last census taken under any provision of law or ordinance of the council of such municipality, are hereby authorized and empowered to order improvements of the streets or alleys or such parts thereof as may be included in an ordinance or order of the common council with the consent of a majority of the property owners whose property as herein provided is liable to assessment therefor for the proposed improvement; and said council is empowered and authorized to make assessments and levy taxes with the consent of a majority of the property owners whose property is assessed, for the purpose of grading, paving, macadamizing, curbing, or guttering streets and alleys, or building sidewalks upon and along any street, roadway or alley within the limits of such municipality, and the cost of such grading, paving, macadamizing, curbing, guttering or sidewalk constructed, or other improvements under authority of this section, shall be so assessed against the abutting property as to require each parcel of land to bear the cost of such grading, paving, macadamizing, curbing, guttering or sidewalk, as far as it abuts thereon, and in

the case of streets or alleys to the center thereof; and the cost of street intersections or crossings may be borne by the city or apportioned to the quarter blocks abutting thereon upon the same basis. The special assessments provided for by this section and the amount to be charged against each lot or parcel of land shall be fixed by the city council or under its authority and shall become a lien on such abutting property, which may be enforced as other taxes are enforced under the laws in force in the Indian Territory. The total amount charged against any tract or parcel of land shall not exceed twenty per centum of its assessed value, and there shall not be required to be paid thereon exceeding one per centum per annum on the assessed value and interest at six per centum on the deferred payments.

For the purpose of paying for such improvements the city council of such municipality is hereby authorized to issue improvement script or certificates for the amount due for such improvements, said script or certificates to be payable in annual installments and to bear interest from date at the rate of six per centum per annum, but no improvement script shall be issued or sold for less than its par value. All of said municipalities are hereby authorized to pass all ordinances necessary to carry into effect the above provisions and for the purpose of doing so may divide such municipality into improvement districts.

§ 734. **Taxation of railway property authorized.**—[26]. That the tangible property of railroad corporations (exclusive of rolling stock) located within the corporate limits of incorporated cities and towns in the Indian Territory shall be assessed and taxed in proportion to its value the same as other property is assessed and taxed in such incorporated cities and towns; and all such city or town councils are hereby empowered to pass such ordinances as may be necessary for the assessment, equalization, levy and collection, annually, of a tax on all property except as herein stated within the corporate limits and for carrying the

same into effect: Provided, that should any person or corporation feel aggrieved by any assessment of property in the Indian Territory, an appeal from such assessment may be taken within sixty days by original petition to be filed in the United States court in the district in which such city or town is located, and the question of the amount and legality of such assessment, and the validity of the ordinance under which such assessment is made may be determined by such court and the costs of such proceeding shall be taxed and apportioned between the parties as the court shall find to be just and equitable.

§ 735. Tribal lands not to become public lands.—[27]. That the lands belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, upon the dissolution of said tribes, shall not become public lands nor property of the United States, but shall be held in trust by the United States for the use and benefit of the Indians respectively comprising each of said tribes, and their heirs as the same shall appear by the rolls as finally concluded as heretofore and hereinafter provided for: Provided, that nothing herein contained shall interfere with any allotments heretofore or hereafter made or to be made under the provisions of this or any other act of Congress.

§ 736. Tribal existence continued.—[28]. That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes or Nations are hereby continued in full force and effect for all purposes authorized by law, until otherwise provided by law, but the tribal council or legislature in any of said tribes or nations shall not be in session for a longer period than thirty days in any one year: Provided, that no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States: Provided further, that no contract involving the payment or expenditure of any money or af-

fecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States.¹⁵

§ 737. Acts in conflict with repealed.—[29]. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.¹⁶

¹⁵ *Goat v. United States*, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *United States Express Co. v. Friedman*, 191 Fed. 673, 112 C. C. A. 219.

¹⁶ *Morrison v. Burnette*, 154 Fed. 617, 83 C. C. A. 391.

CHAPTER 53

ACT MAY 27, 1908—AN ACT FOR THE REMOVAL OF RESTRICTIONS FROM PART OF THE LANDS OF ALLOTTEES OF THE FIVE CIVILIZED TRIBES, AND FOR OTHER PURPOSES

(CHAPTER 199, 35 STAT. 312)

- § 738. Restrictions on alienation removed.
- 739. Secretary may continue to remove restrictions.
- 740. Eminent domain—Restrictions on alienation.
- 741. Lease of allotted lands.
- 742. Jurisdiction remitted to state courts.
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- 760. Tribal property.
- 761. Townsites.

§ 738. Restrictions upon alienation removed.—[1]. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that from and after sixty days from the date of this act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions. All lands, except home-

steads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degrees of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe.¹

§ 739. Secretary may continue to remove restrictions.—
[1]. The Secretary of the Interior shall not be prohibited by this act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act.²

§ 740. Eminent domain—Restrictions upon alienation.—
[1]. No restriction of alienation shall be construed to prevent the exercise of the right of eminent domain in condemning rights of way for public purposes over allotted lands, and for such purposes sections thirteen to twenty-

¹ Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; Goat v. United States, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; Mullen v. United States, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834; Deming Inv. Co. v. United States, 224 U. S. 471, 32 Sup. Ct. 549, 56 L. Ed. 847; Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941; English v. Richardson, 224 U. S. 681, 32 Sup. Ct. 571, 56 L. Ed. 949; United States v. Allen, 179 Fed. 13, 103 C. C. A. 1; Bettes v. Brower (D. C.) 184 Fed. 342; United States v. Shock (C. C.) 187 Fed. 862-870; Henry Gas Co. v. United States, 191 Fed. 132, 111 C. C. A. 612; Bell v. Cook (C. C.) 192 Fed. 597; Truskett v. Closser, 198 Fed. 835, 117 C. C. A. 477; Bartlett v. United States (C. C. A.) 203 Fed. 410; Jefferson v. Winkler, 26 Okl. 653, 110 Pac. 755.

² Bartlett v. United States (C. C. A.) 203 Fed. 410.

three inclusive, of an act entitled "An act to grant the right of way through Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for other purposes," approved February twenty-eighth, nineteen hundred and two (Thirty-Second Statutes at Large, page forty-three), are hereby continued in force in the state of Oklahoma.

§ 741. **Lease of allotted lands.**—[2]. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: Provided, that leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise:³

§ 742. **Jurisdiction remitted to state courts.**—[2]. And provided further, that the jurisdiction of the probate courts of the state of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years.⁴

§ 743. **Rolls conclusive evidence of quantum of Indian blood and age.**—[3]. That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Sec-

³ *Dixon v. Owen* (Okl.) 132 Pac. 351; *United States v. Abrams* (O. C.) 181 Fed. 847; *Truskett v. Closser*, 198 Fed. 835, 117 O. C. A. 477; *Davis v. Selby Oil & Gas Co.*, 35 Okl. 254, 128 Pac. 1083.

⁴ *Yarbrough v. Spalding*, 31 Okl. 806, 123 Pac. 843; *Williams v. Joins* (Okl.) 126 Pac. 1013; *Campbell v. McSpadden*, 34 Okl. 377, 127 Pac. 854; *Dewalt v. Cline* (Okl.) 128 Pac. 121; *Lawless v. Raddis* (Okl.) 129 Pac. 711.

retary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes and of no other persons to determine questions arising under this act and the enrollment records of the Commissioner to the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman.⁵

§ 744. **Mineral leases.**—[3]. That no oil, gas, or other mineral lease entered into by any of said allottees prior to the removal of restrictions requiring the approval of the Secretary of the Interior shall be rendered invalid by this act, but the same shall be subject to the approval of the Secretary of the Interior as if this act had not been passed: Provided, that the owner or owners of any allotted land from which restrictions are removed by this act, or have been removed by previous acts of Congress, or by the Secretary of the Interior, or may hereafter be removed under and by authority of any act of Congress, shall have the power to cancel and annul any oil, gas, or mineral lease on said land whenever the owner or owners of said land and the owner or owners of the lease thereon agree in writing to terminate said lease and file with the Secretary of the Interior, or his designated agent, a true copy of the agreement in writing canceling said lease, which said agreement shall be executed and acknowledged by the parties thereto in the manner required by the laws of Oklahoma for the execution and acknowledgment of deeds, and the same shall be recorded in the county where the land is situate.

§ 745. **Taxation where restrictions are removed.**—[4]. That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than

⁵ *Kimberlin v. Commission to Five Civilized Tribes*, 104 Fed. 653, 44 C. C. A. 109; *Bell v. Cook* (C. C.) 192 Fed. 597; *Yarbrough v. Spalding* 21 Okl. 806, 123 Pac. 843; *Williams v. Joins*, 34 Okl. 733, 126 Pac. 1013; *Campbell v. McSpadden*, 34 Okl. 377, 127 Pac. 854; *Lawless v. Raddis* (Okl.) 129 Pac. 711; *Rice v. Anderson* (Okl.) 134 Pac. 1121.

allottees of the Five Civilized Tribes: Provided, that allotted lands shall not be subjected or held liable, to any form of personal claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law.⁶

§ 746. **Conveyance, etc., before removal of restrictions declared void.**—[5]. That any attempted alienation or incumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of incumbering real estate, made before or after the approval of this act, which affects the title of the land allotted to allottees of the Five Civilized Tribes prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this act shall be absolutely null and void.⁷

§ 747. **Minors—Jurisdiction of probate courts.**—[6]. That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the state of Oklahoma. The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, to appoint such local representatives within the state of Oklahoma who shall be citizens of that state or now domiciled therein as he may deem necessary to inquire into and investigate the conduct of guardians or curators having in charge the estates of such minors, and whenever such representative or representatives of the Secretary of the Interior shall be of opinion that the estate of any minor is not being properly cared for by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate

⁶ Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941; Gleason v. Wood, 224 U. S. 679, 32 Sup. Ct. 571, 56 L. Ed. 947; English v. Richardson, 224 U. S. 680, 32 Sup. Ct. 571, 56 L. Ed. 949; United States v. Shock (C. C.) 187 Fed. 862.

⁷ Goat v. United States, 224 U. S. 458, 32 Sup. Ct. 544, 56 L. Ed. 841; Casey v. Bingham (Okl.) 132 Pac. 663.

in value by reason of the negligence or carelessness or incompetency of the guardian or curator, said representative or representatives of the Secretary of the Interior shall have power and it shall be their duty to report said matter in full to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of prosecuting any necessary remedy, either civil or criminal, or both, to preserve the property and protect the interests of said minor allottees; and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors. The probate courts may, in their discretion, appoint any such representative of the Secretary of the Interior as guardian or curator for such minors, without fee or charge.^a

And said representatives of the Secretary of the Interior are further authorized, and it is made their duty, to counsel and advise all allottees, adult or minor, having restricted lands of all of their legal rights with reference to their restricted lands, without charge, and to advise them in the preparation of all leases authorized by law to be made, and at the request of any allottee having restricted land he shall, without charge, except the necessary court and recording fees and expenses, if any, in the name of the allottee, take such steps as may be necessary, including the bringing of any suit or suits and the prosecution and appeal thereof, to cancel and annul any deed, conveyance, mortgage, lease, contract to sell, power of attorney, or any other encumbrance of any kind or character, made or attempted to be

^a United States v. Allen, 179 Fed. 13, 103 C. C. A. 1; Henry Gas Co. v. United States, 191 Fed. 132, 111 C. C. A. 612; Truskett v. Closser, 198 Fed. 835, 117 C. C. A. 477; United States v. Allen (C. C.) 171 Fed. 907; Heckman v. United States, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; Jefferson v. Winkler, 26 Okl. 653, 110 Pac. 755.

made or executed in violation of this act or any other act of Congress, and to take all steps necessary to assist said allottees in acquiring and retaining possession of their restricted lands.

Supplemental to the funds appropriated and available for expenses connected with the affairs of the Five Civilized Tribes, there is hereby appropriated, for the salaries and expenses arising under this section, out of any funds in the treasury not otherwise appropriated, the sum of ninety thousand dollars, to be available immediately, and until July first, nineteen hundred and nine, for expenditure under the direction of the Secretary of the Interior:

§ 748. **Leases of lands of minors.**—[6]. Provided, that no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court or otherwise.

§ 749. **Appropriation.**—[6]. And there is hereby further appropriated, out of any money in the treasury not otherwise appropriated, to be immediately available and available until expended as the Attorney General may direct, the sum of fifty thousand dollars, to be used in the payment of necessary expenses incident to any suits brought at the request of the Secretary of the Interior in the Eastern judicial district of Oklahoma: Provided, that the sum of ten thousand dollars of the above amount, or so much thereof as may be necessary, may be expended in the prosecution of cases in the Western judicial district of Oklahoma.

§ 750. **Suits to recover town lots may be dismissed when.**—[6]. Any suit brought by the authority of the Secretary of the Interior against the vendee or mortgagee of a town lot, against whom the Secretary of the Interior may find upon investigation no fraud has been established may be dismissed and the title quieted upon payment of the full balance due on the original appraisement of such lot: Provided, that such investigation must be concluded within six months after the passage of this act.

§ 751. **United States not prohibited from bringing suits.**—[6]. Nothing in this act shall be construed as a denial of the right of the United States to take such steps as may be necessary, including the bringing of any suit and the prosecution and appeal thereof, to acquire or retain possession of restricted Indian lands, or to remove cloud therefrom, or clear title to the same, in cases where deeds, leases or contracts of any other kind or character whatsoever have been or shall be made contrary to law with respect to such lands prior to the removal therefrom of restrictions upon the alienation thereof; such suits to be brought on the recommendation of the Secretary of the Interior, without costs or charges to the allottees, the necessary expenses incurred in so doing to be defrayed from the money appropriated by this act.

§ 752. **Limitation upon the right to contest.**—[7]. That no contest shall be instituted after sixty days from the date of the selection of any allotment hereafter made, nor after ninety days from the approval of this act in case of selections made prior thereto by or for any allottee of the Five Civilized Tribes, and, as early thereafter as practicable, deed or patent shall issue therefor.

§ 753. **Amending Curtis Act.**—[8]. That section twenty-three of an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, is hereby amended by adding at the end of said section, the words "or a judge of a county court of the state of Oklahoma." *

§ 754. **Alienation of inherited lands.**—[9]. That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, that no conveyance of any interest of any full-blood Indian heir in such land shall be

* United States v. Shock (C. C.) 187 Fed. 862-870.

valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee:¹⁰

§ 755. **Alienation of inherited lands—Continued.—**[9]. Provided further, that if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the state of Oklahoma, free from all restrictions:¹¹

§ 756. **Wills.—**[9]. Provided further, that the provisions of section twenty-three of the Act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section.¹²

§ 757. **Payment of tribal debts.—**[10]. That the Secretary of the Interior is hereby authorized and directed to pay out of any moneys in the treasury of the United States, belonging to the Choctaw or Chickasaw Nations respectively, any and all outstanding general and school warrants

¹⁰ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *Harris v. Gale* (C. C.) 188 Fed. 712; *Henry Gas Co. v. United States*, 191 Fed. 132, 111 C. C. A. 612; *Armstrong v. Wood* (C. C.) 195 Fed. 138; *MaHarry v. Eatman*, 29 Okl. 46, 116 Pac. 935; *Gardner v. State ex rel. Langston*, 27 Okl. 1, 110 Pac. 749; *United States v. Knight* (C. C. A.) 206 Fed. 145; *Mullen v. Short* (Okl.) 133 Pac. 230.

¹¹ See annotations to preceding section.

¹² *Proctor v. Harrison*, 34 Okl. 181, 125 Pac. 479.

duly signed by the auditor of public accounts of the Choctaw and Chickasaw Nations, and drawn on the national treasurers thereof prior to January first, nineteen hundred and seven, with six per cent. interest per annum from the respective dates of said warrants: Provided, that said warrants be presented to the United States Indian agent at the Union Agency, Muskogee, Oklahoma, within sixty days from the passage of this act, together with the affidavits of the respective holders of said warrants that they purchased the same in good faith for a valuable consideration, and had no reason to suspect fraud in the issuance of said warrants: Provided further, that such warrants remaining in the hands of the original payee shall be paid by said Secretary when it is shown that the services for which said warrants were issued were actually performed by said payee.

§ 758. **Royalties from mineral leases.**—[11]. That all royalties arising on and after July first, nineteen hundred and eight, from mineral leases of allotted Seminole lands heretofore or hereafter made, which are subject to the supervision of the Secretary of the Interior, shall be paid to the United States Indian agent, Union Agency, for the benefit of the Indian lessor or his proper representative to whom such royalties shall thereafter belong; and no such lease shall be made after said date except with the allottee or owner of the land: Provided, that the interest of the Seminole Nation in leases or royalties arising thereunder on all allotted lands shall cease on June thirtieth, nineteen hundred and eight.

§ 759. **Allotment records.**—[12]. That all records pertaining to the allotment of lands of the Five Civilized Tribes shall be finally deposited in the office of the United States Indian agent, Union Agency, when and as the Secretary of the Interior shall determine such action shall be taken, and there is hereby appropriated, out of any money in the treasury not otherwise appropriated, to be immediately available as the Secretary of the Interior may direct, the sum of fif-

teen thousand dollars, or so much thereof as may be necessary to enable the Secretary of the Interior to furnish the various counties of the state of Oklahoma certified copies of such portions of said records as affect title to lands in the respective counties.

§ 760. Tribal property.—[13]. That the second paragraph of section eleven of an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, is hereby amended to read as follows:

That every officer, member or representative of the Five Civilized Tribes, respectively, or any other person, having in his possession, custody or control, any money or other property, including the books, documents, records or any other papers, of any of said tribes, shall make full and true account and report thereof to the Secretary of the Interior, and shall pay all money of the tribe in his possession, custody or control, and shall deliver all other tribal properties so held by him to the Secretary of the Interior, and if any person shall willfully and fraudulently fail to account for all such money and property so held by him, or to pay and deliver the same as herein provided, prior to July thirty-first, nineteen hundred and eight, he shall be deemed guilty of embezzlement and upon conviction thereof shall be punished by fine of not exceeding five thousand dollars, or by imprisonment not exceeding five years, or by both such fine and imprisonment, according to the laws of the United States relating to such offense, and shall be liable in civil proceedings to be prosecuted in behalf of and in the name of the tribe or tribes in interest for the amount or value of the money or property so withheld.

§ 761. Townsites.—[14]. That the provisions of section thirteen of the Act of Congress approved April twenty-sixth, nineteen hundred and six (Thirty-Fourth Statutes at Large, page one hundred and thirty-seven), shall not ap-

ply to town lots in townsites heretofore established, surveyed, platted, and appraised under the direction of the Secretary of the Interior, but nothing herein contained shall be construed to authorize the conveyance of any interest in the coal or asphalt underlying said lots.

CHAPTER 54

CONVEYANCES OF REAL ESTATE

(CHAPTER 27, MANSFIELD'S DIGEST OF 1884, PUT IN FORCE IN INDIAN TERRITORY FEBRUARY 19, 1903, AND SUPERSEDED BY OKLAHOMA STATUTES NOVEMBER 16, 1907)

- § 762. Lands may be alienated by deed—Words “grant, bargain and sell” equivalent to express warranty, of what.
- 763. Breaches may be assigned as upon express covenant.
- 764. Conveyance in fee simple.
- 765. Subsequently acquired title by grantor inures to benefit of grantee.
- 766. A fee tail an estate for life.
- 767. One may convey notwithstanding adverse possession.
- 768. Term “real estate” defined.
- 769. Wills not embraced by this act.
- 770. Grant of lands to two or more constitutes them tenants in common.
- 771. Married woman may convey her real estate, how.
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- 791. Deeds of administrators, etc.—Acknowledging and recording.
- 792. Deeds as evidence.
- 793. Recording constructive notice.
- 794. Deed not effective as to third person until recorded.

§ 762. Lands may be alienated by deed—Words “grant, bargain and sell” equivalent to express warranty, of what.

—[639]. All lands, tenements and hereditaments may be aliened and possession thereof transferred by deed without livery of seizin, and the words “grant, bargain and sell” shall be an express covenant to the grantee, his heirs and assigns, that the grantor is seized of an indefeasible estate in fee simple, free from incumbrance done or suffered from the grantor, except rents or services that may be expressly reserved by such deed, as also for the quiet enjoyment thereof against the grantor, his heirs and assigns, and from the claim or demand of all other persons whatsoever, unless limited by express words in such deed.¹

§ 763. Breaches may be assigned as upon express covenant.—[640]. The grantee, his heirs or assigns, may in any action assign breaches as if such covenants were expressly inserted.

§ 764. Conveyance in fee simple.—[641]. The term or word “heirs,” or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; but all deeds shall be construed to convey a complete estate of inheritance in fee simple, unless expressly limited by appropriate words in such deed.

§ 765. Subsequently acquired title by grantor inures to benefit of grantee.—[642]. If any person shall convey any real estate by deed, purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time of such conveyance have the legal estate in such lands, but shall afterward acquire the same, the legal or equitable estate afterward acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance.²

¹ Brodle v. Watkins, 31 Ark. 319; Winston v. Vaughan, 22 Ark. 72, 76 Am. Dec. 418; Floyd v. Ricks, 14 Ark. 286, 58 Am. Dec. 374; Cloyes v. Beebe, 14 Ark. 489.

² Cocke v. Brogan, 5 Ark. 693; Holland v. Rogers, 33 Ark. 251; Watkins v. Wassell, 15 Ark. 73; Jones v. Green, 41 Ark. 363.

§ 766. **A fee tail an estate for life.—[643].** In cases when by common law any person may hereafter become seized in fee tail of any lands or tenements, by virtue of any devise, gift, grant or other conveyance, such person, instead of being or becoming seized thereof in fee tail, shall be adjudged to be and become seized thereof for his natural life only, and the remainder shall pass in fee simple absolute to the person to whom the estate tail would first pass according to the course of the common law by virtue of such devise, gift, grant or conveyance.

§ 767. **One may convey notwithstanding adverse possession.—[644].** Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest in the same manner and with like effect as if he was in the actual possession thereof.

§ 768. **Term "real estate" defined.—[645].** The term "real estate," as used in this act, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real.

§ 769. **Wills not embraced by this act.—[646].** This act shall not be construed so as to embrace last wills and testaments.

§ 770. **Grant of lands to two or more constitutes them tenants in common.—[647].** Every interest in real estate, granted or devised to two or more persons, other than executors and trustees as such, shall be in tenancy in common, unless expressly declared in such grant or devise to be a joint tenancy.^a

§ 771. **Married woman may convey her real estate, how.—[648].** A married woman may convey her real estate or any part thereof by deed of conveyance, executed by her-

^a Cockrill v. Armstrong, 31 Ark. 580.

self and her husband, and acknowledged and certified in the manner hereinafter prescribed.⁴

§ 772. **May relinquish her dower, how.**—[649]. A married woman may relinquish her dower in any of the real estate of her husband by joining with him in a deed of conveyance thereof, and acknowledging the same in the manner hereafter prescribed.⁵

§ 773. **Witnesses to conveyance.**—[650]. Deeds and instruments of writing for the conveyance of real estate shall be executed in the presence of two disinterested witnesses, or, in default thereof, shall be acknowledged by the grantor in the presence of two such witnesses, who shall then subscribe such deed or instrument in writing for the conveyance of such real estate; and when the witnesses do not subscribe the deed or instrument of writing aforesaid at the time of the execution thereof, the date of their subscribing the same shall be stated with their signatures.⁶

§ 774. **Proof or acknowledgment of deed.**—[651]. The proof or acknowledgment of every deed or instrument of writing for the conveyance of any real estate, shall be taken by some one of the following courts or officers:

First. When acknowledged or proven within this state before the Supreme Court, the circuit court, or either of the judges thereof, or the clerk of any court of record, or before any justice of the peace, or notary public.⁷

⁴ Roberts v. Wilcoxson, 36 Ark. 355; Ward v. Ward's Estate, 36 Ark. 586; Chrisman v. Partee, 38 Ark. 31; Felkner v. Tighe, 39 Ark. 357; Donahue v. Mills, 41 Ark. 421; Tiller v. McCoy, 38 Ark. 91; Shryock v. Cannon, 39 Ark. 434; Harrod v. Myers, 21 Ark. 592, 76 Am. Dec. 409; Watson v. Billings, 38 Ark. 278, 42 Am. Rep. 1; Rockafellow v. Oliver, 41 Ark. 169; Adkins v. Arnold, 32 Okl. 167, 121 Pac. 186.

⁵ Watson v. Billings, 38 Ark. 278, 42 Am. Rep. 1; Witter v. Biscoe, 13 Ark. 422; McDaniel v. Grace, 15 Ark. 465; Meyer v. Gossett, 38 Ark. 377; Pillow v. Wade, 31 Ark. 678; Countz v. Markling, 30 Ark. 17; Dutton v. Stuart, 41 Ark. 101.

⁶ Cocke v. Brogan, 5 Ark. 693; McDaniel v. Grace, 15 Ark. 475; Jackson v. Allen, 30 Ark. 110; Rev. St. 1837, c. 81, §§ 1-12.

⁷ Briscoe v. Byrd, 15 Ark. 655.

Second. When acknowledged or proven without this state and within the United States or their territories, before any court of the United States or of any state or territory, having a seal, or the clerk of any such court, or before any notary public, or before the mayor of any city or town, or the chief officer of any city or town having a seal, or before a commissioner appointed by the Governor of this state.⁸

Third. When acknowledged or proven without the United States, before any court of any state, kingdom or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any officer of any foreign country who, by the laws of such country, is authorized to take probate of the conveyance of real estate of his own country, if such officer has, by law, an official seal.⁹

§ 775. Acknowledgment to be attested, how, where taken within United States.—[652]. In cases of acknowledgment or proof of deeds or conveyances of real estate, taken within the United States or territories thereof, when taken before any court or officer having a seal of office, such deed or conveyance shall be attested under such seal of office; and if such officer have no seal of office, then under the official signature of such officer.¹⁰

§ 776. Acknowledgment to be attested, how, where taken without United States.—[653]. In all cases of deeds and conveyances proven or acknowledged without the United States or their territories, such acknowledgment or proof must be attested under the official seal of the court or officer before whom such probate is had.

§ 777. Certificate of.—[654]. Every court or officer that shall take the proof or acknowledgment of any deed or con-

⁸ *Worsham v. Freeman*, 34 Ark. 55.

⁹ Rev. St. 1837, c. 31, § 13; Act April 7, 1873 (Laws 1873, p. 78) § 1: Act Dec. 19, 1846 (Laws 1846, p. 72) § 1, as amended by Act Dec. 14, 1874 (Laws 1874-75, p. 58).

¹⁰ *Worsham v. Freeman*, 34 Ark. 55.

veyance of real estate, or the relinquishment of dower of any married woman in any conveyance of the real estate of her husband, shall grant a certificate thereof and cause such certificate to be indorsed on said deed, instrument, conveyance or relinquishment of dower, which certificate shall be signed by the clerk of the court where probate is taken in court, or by the officer before whom the same is taken and sealed, if he have a seal of office.¹¹

§ 778. **Proof of identity of grantor or witness.**—[655]. When any grantor in any deed or instrument that conveys real estate, or whereby any real estate may be affected in law or equity, or any witness to any like instrument, shall present himself before any court or other officer for the purpose of acknowledging or proving the execution of any such deed or instrument as aforesaid, if such grantor or witness shall be personally unknown to such court or officer, his identity and his being the person he purports to be on the face of such instrument of writing, shall be proven to such court or officer, which proof may be made by witnesses known to the court or officer, or the affidavit of such grantor or witness, if such court or officer shall be satisfied therewith; which proof or affidavit shall also be indorsed on such deed or instrument of writing.

§ 779. **Acknowledgment by grantor.**—[656]. The acknowledgment of deeds and instruments of writing for the conveyance of real estate, or whereby such real estate is to be affected in law or equity, shall be by the grantor appearing in person before such court or officer having the authority by law to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein mentioned and set forth.¹²

¹¹ Trammell v. Thurmond, 17 Ark. 203; Ferguson v. Peden, 33 Ark. 150; Little v. Dodge, 32 Ark. 453; Sonfield v. Thompson, 42 Ark. 46, 48 Am. Rep. 49; Meyer v. Gossett, 38 Ark. 377; Holt v. Moore, 37 Ark. 148.

¹² Johnson v. Godden, 33 Ark. 600; Martin v. O'Bannon, 35 Ark. 62; Ford v. Burks, 37 Ark. 91; Conner v. Abbott, 35 Ark. 365.

§ 780. **Proof of.**—[657]. When any such deed or instrument is to be proven, it shall be done by one or more of the subscribing witnesses personally appearing before the proper court or officer, and stating on oath that he or they saw the grantor subscribe such deed or instrument of writing, or that the grantor acknowledged in his or their presence that he had subscribed and executed such deed or instrument for the purposes and consideration therein mentioned, and that he or they had subscribed the same as witnesses at the request of the grantor.

§ 781. **How proved when witness is dead.**—[658]. If any grantor has not acknowledged the execution of any such deed or instrument, and the subscribing witnesses be dead or cannot be had, it may be proved by the evidence of the handwriting of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the deposition of two or more disinterested persons swearing to each signature.

§ 782. **Married women, conveyance and relinquishment of dower by.**—[659]. The conveyance of real estate by any married woman, or the relinquishment of dower in any of her husband's real estate, shall be authenticated and the title passed, by such married woman voluntarily appearing before the proper court or officer, and in the absence of her husband declaring that she had of her own free will executed the deed or instrument in question, or that she had signed the relinquishment of dower for the purposes therein contained, and set forth without compulsion or undue influence of her husband.¹³

¹³ Little v. Dodge, 32 Ark. 453; Meyer v. Gossett, 38 Ark. 377; Donahue v. Mills, 41 Ark. 421; Wentworth v. Clark, 33 Ark. 432; Shryock v. Cannon, 39 Ark. 434; Chaffe v. Oliver, 39 Ark. 531; Stidham v. Mathews, 29 Ark. 650; Beavers v. Baucum, 33 Ark. 722; Stillwell v. Adams, 29 Ark. 346; Magness v. Arnold, 31 Ark. 103; Scott v. Ward, 25 Ark. 480; Tubbs v. Gatewood, 26 Ark. 128; Russell v. Umphlet, 27 Ark. 339.

§ 783. **To be proved or acknowledged before recorded.**—[660]. All deeds and other instruments in writing for the conveyance of any real estate, or by which any real estate may be affected in law or equity, shall be proven or duly acknowledged in conformity with the provisions of this act before they or any of them shall be admitted to record.¹⁴

§ 784. **Power of attorney to be recorded.**—[661]. Every letter of attorney containing a power to convey any real estate as agent or attorney for the owner thereof, or execute as agent or attorney for another any deed or instrument in writing that shall convey any real estate, or whereby any real estate shall be affected in law or equity, shall be acknowledged or proven and certified and recorded with any deed that such agent or attorney shall make in virtue of such letter of attorney.¹⁵

§ 785. **Power of attorney to be acknowledged.**—[662]. Letters of attorney shall be proven or acknowledged before the same courts or officers that are authorized by this act to take probate of deeds conveying real estate.

§ 786. **Power of attorney—How revoked.**—[663]. No letter of attorney, duly acknowledged or proved, and certified as prescribed by this act, shall be revoked but by the maker of such letter of attorney or his legal representatives, which revocation shall be in writing, acknowledged or proved before the proper court or officer, and filed for record in the county or counties where such letter of attorney was intended to operate—all such letters of attorney shall be revoked and deemed void from the time of filing such revocations for record.

§ 787. **Deed recorded and acknowledged admissible as evidence.**—[664]. Every deed or instrument in writing conveying or affecting real estate which shall be acknowl-

¹⁴ Fritz v. Brown, 20 Okl. 263, 95 Pac. 437.

¹⁵ Jones v. Green, 41 Ark. 363.

edged or proved and certified, as prescribed by this act, may, together with the certificate of acknowledgment, proof, or relinquishment of dower, be recorded by the recorder of the county where such land to be conveyed or affected thereby shall be situate, and when so recorded may be read in evidence without further proof of execution.¹⁶

§ 788. **Lost deed.**—[665]. If it shall appear at any time that any deed or instrument, duly acknowledged or proved and recorded as prescribed by this act, is lost or not within the power and control of the party wishing to use the same, the record thereof, or a transcript of such record certified by the recorder, may be read in evidence without further proof of execution.

§ 789. **Acknowledgment and recording not conclusive evidence.**—[666]. Neither the certificate of acknowledgment nor probate of any such deed or instrument, nor the record or transcript thereof, shall be conclusive, but may be rebutted.¹⁷

§ 790. **Deed by commissioner of state lands.**—[667]. Where, by law, the commissioner of state lands is required to execute any deed of conveyance or patent for any lands sold or granted by the state, such deed of conveyance or patent, when executed by such commissioner under his official seal, shall convey all the right and title of the state in and to said lands to the purchaser, and may be recorded in the office of the recorder of the proper county, and the original, or a duly certified copy of the same, taken from the record thereof, shall have the same effect as evidence as if such deed or patent had been acknowledged and recorded under the existing laws of this state.¹⁸

¹⁶ *Simpson v. Montgomery*, 25 Ark. 365, 99 Am. Dec. 228; *Wilson v. Spring*, 38 Ark. 181; *Watson v. Billings*, 38 Ark. 278, 42 Am. Rep. 1; *Dorr v. School Dist. No. 26*, 40 Ark. 237.

¹⁷ Rev. St. 1837, c. 31.

¹⁸ Act Dec. 31, 1850 (Laws 1850-51, p. 65).

§ 791. **Deeds of administrators, etc. — Acknowledging and recording.**—[668]. All deeds of conveyance made by administrators, executors, guardians and commissioners in chancery, and deeds made and executed by sheriffs of real estate sold under executions, duly made and executed, acknowledged and recorded, as required by law, and purporting to convey real estate, shall vest in the grantee, his heirs and assigns, a good and valid title, both in law and in equity, and shall be evidence of the facts therein recited, and of the legality and regularity of the sale of the lands so conveyed until the contrary be made to appear.¹⁹

§ 792. **Deeds as evidence.**—[669]. Every deed so made, executed, acknowledged and recorded, or a certified copy thereof, under the seal of the recorder of the proper county, shall be received in evidence without further proof of its execution.²⁰

§ 793. **Recording constructive notice.**—[670]. Every deed, bond, or instrument of writing, affecting the title in law or equity to any property, real or personal, within this state, which is or may be required by law to be acknowledged, or proved and recorded, shall be constructive notice to all persons from the time the same is filed for record in the office of the recorder of the proper county; and it shall be the duty of such recorder to indorse, on every such deed, bond, or instrument, the precise time when the same is filed for record in his office.

§ 794. **Deed not effective as to third person until recorded.**—[671]. No deed, bond, or instrument of writing, for the conveyance of any real estate, or by which the title thereto may be affected in law or equity, hereafter made or executed, shall be good or valid against a subsequent purchaser of such real estate for a valuable consideration, without actual notice thereof; or against any creditor of the

¹⁹ Hughes v. Watt, 26 Ark. 228.

²⁰ Act Jan. 12, 1853 (Laws 1852-53, p. 207).

person executing such deed, bond, or instrument, obtaining a judgment or decree, which by law may be a lien upon such real estate, unless such deed, bond, or instrument, duly executed and acknowledged, or approved, as is or may be required by law, shall be filed for record in the office of the clerk and ex officio recorder of the county where such real estate may be situated.²¹

²¹ Byers v. Engles, 16 Ark. 543; McFadden v. Blocker, 2 Ind. T. 260, 48 S. W. 1043-1055, 58 L. R. A. 878.

CHAPTER 55

RECORDING ACT

(CHAPTER 707, 32 STAT. 841, APPROVED AND EFFECTIVE FEBRUARY 19, 1903)

- § 795. Mansfield's Digest, chapter 27, extended over Indian Territory.
- 796. Recording and filing of instruments, when authorized.
- 797. Instruments previously recorded.
- 798. Acknowledgments.
- 798a. Osage recording act.

§ 795. Mansfield's Digest, chapter 27, extended over Indian Territory.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that chapter twenty-seven of the Digest of the Statutes of Arkansas, known as Mansfield's Digest of eighteen hundred and eighty-four, is hereby extended to the Indian Territory, so far as the same may be applicable and not inconsistent with any law of Congress: Provided, that the clerk or deputy clerk of the United States court of each of the courts of said territory shall be ex officio recorder for his district and perform the duties required of recorder in the chapter aforesaid, and use the seal of such court in cases requiring a seal, and keep the records of such office at the office of said clerk or deputy clerk.¹

§ 796. Recording and filing of instruments, when authorized.—It shall be the duty of each clerk or deputy clerk of such court to record in the books provided for his office all deeds, mortgages, deeds of trust, bonds, leases, covenants, defeasances, bills of sale, and other instruments of writing of or concerning lands, tenements, goods, or chattels; and where such instruments are for a period of time limited on the face of the instrument they shall be filed and indexed, if desired by the holder thereof, and such filing for the period of twelve months from the filing thereof shall

¹ Adkins v. Arnold, 32 Okl. 167, 121 Pac. 186.

have the same effect in law as if recorded at length. The fees for filing, indexing, and cross indexing such instruments shall be twenty-five cents, and for recording shall be as set forth in section thirty-two hundred and forty-three of Mansfield's Digest of eighteen hundred and eighty-four.

That the said clerk or deputy clerk of such court shall receive as compensation as such ex officio recorder for his district all fees received by him for recording instruments provided for in this act, amounting to one thousand eight hundred dollars per annum or less; and all fees so received by him as aforesaid amounting to more than the sum of one thousand eight hundred dollars per annum shall be accounted to the Department of Justice, to be applied to the permanent school fund of the district in which said court is located.

§ 797. Instruments previously recorded.—Such instruments heretofore recorded with the clerk of any United States court in Indian Territory shall not be required to be again recorded under this provision, but shall be transferred to the indexes without further cost, and such records heretofore made shall be of full force and effect, the same as if made under this statute.

That wherever in said chapter the word "county" occurs there shall be substituted therefor the word "district," and wherever the words "state" or "state of Arkansas" occur there shall be substituted therefor the words "Indian Territory," and wherever the words "clerk" or "recorder" occur there shall be substituted the words "clerk or deputy clerk of the United States court." ²

§ 798. Acknowledgments. — All acknowledgments of deeds of conveyance taken within the Indian Territory shall be taken before a clerk or deputy clerk of any of the courts in said territory, a United States commissioner, or a notary public appointed in and for said territory.

² Eberle v. King, 20 Okl. 49, 93 Pac. 748-750; Fritz v. Brown, 20 Okl. 263, 95 Pac. 437.

All instruments of writing the filing of which is provided for by law shall be recorded or filed in the office of the clerk or deputy clerk at the place of holding court in the recording district where said property may be located, and which said recording districts are bounded as follows:

(The remaining sections give boundaries of recording districts.)

§ 798a. **Osage recording act.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Osage Indian Reservation, in Oklahoma Territory, be, and the same is hereby, declared to be a recording district for the purpose of recording and filing such deeds, mortgages, and other instruments in writing as are authorized by the laws of Oklahoma Territory affecting property within said reservation. And the deputy clerk of the District court located at the town of Pawhuska, on the said reservation, shall be ex officio register of deeds. As compensation for services the said recorder is hereby authorized to retain the fees legally collected by him for the recording of deeds and other instruments, up to and including the sum of one thousand eight hundred dollars per annum, and the fees collected by him shall be the same as are charged for like service in other recording districts in said Territory. Said recorder shall make monthly reports to the Secretary of the Interior of the fees collected by him, and said Secretary is hereby authorized to use such part of said fees as may be needed for the purchase of records, books, supplies, and expenses of said office. If the receipts of said office exceed the said sum of one thousand eight hundred dollars, the said excess shall be turned into the Treasury of the United States. This Act shall not be construed in any way to obligate the government to pay the said recorder any deficiency below the sum of one thousand eight hundred dollars yearly.

[2] That all deeds, papers, and other instruments recorded by said recorder in the Osage Nation shall have the

same effect, legally or otherwise, as if recorded in the recording office of any regularly organized county in the Oklahoma Territory: Provided, That this Act shall become inoperative when the Osage Reservation shall become an organized county of Oklahoma, and all records shall be turned over to the proper county officer whenever such county is organized.*

* 34 Stat. 208, c. 2573, approved June 4, 1906.

CHAPTER 56

DESCENT AND DISTRIBUTION

(CHAPTER 49, MANSFIELD'S DIGEST OF THE STATUTES OF ARKANSAS OF 1884, PUT IN FORCE IN THE INDIAN TERRITORY BY ACT OF MAY 2, 1890, 26 STAT. 81)

- § 799. General law of descent.
- 800. Posthumous children—How to inherit.
- 801. Illegitimate children to inherit and transmit on part of mother.
- 802. How legitimized by subsequent marriage.
- 803. Issue of invalid marriages.
- 804. No bar that ancestor was alien.
- 805. No kindred to inherit, whole to go to wife or husband—Estate to escheat.
- 806. Some children dead and some living to take per stirpes.
- 807. This rule to apply in every case where those entitled to inherit in equal degrees of consanguinity to intestate.
- 808. If there are no descendants, rules of descent: (1) Where estate comes by father; (2) by mother; and (3) where a new acquisition.
- 809. Estate, how to go, where no father or mother.
- 810. Those of half-blood—How to inherit.
- 811. In cases not herein provided for, descent to be according to common law.
- 812. All who inherit, to do so as tenants in common.
- 813. By settlement or portion to child, how reckoned, and effect of.
- 814. When not equal to share of estate.
- 815. Value of such advancement, how ascertained.
- 816. Maintenance, education, etc., not to be taken as advancement.
- 817. Of term "real estate."
- 818. Of term "inheritance."
- 819. Where person described as "living."
- 820. Of expression "come on part of father" or "on part of mother."
- 821. Heir at law may be made by declaration in writing.
- 822. Declaration must be recorded before of effect.

§ 799. General law of descent.—[2522]. When any person shall die, having title to any real estate of inheritance, or personal estate, not disposed of, nor otherwise limited by marriage settlement, and shall be intestate as to such estate, it shall descend and be distributed, in parcenary, to his kin-

dred, male and female, subject to the payment of his debts and the widow's dower, in the following manner:

First. To children, or their descendants, in equal parts.

Second. If there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants, in equal parts.

Third. If there be no children, nor their descendants, father, mother, brothers or sisters, nor their descendants, then to the grandfather, grandmother, uncles and aunts and their descendants, in equal parts, and so on in other cases, without end, passing to the nearest lineal ancestor, and their children and their descendants, in equal parts.¹

§ 800. Posthumous children—How to inherit.—[2523]. Posthumous children of the intestate shall inherit in like manner as if born in the lifetime of the intestate, but no right of inheritance shall accrue to any person other than the children of the intestate, unless they be born at the time of the intestate's death.

§ 801. Illegitimate children to inherit and transmit on part of mother.—[2524]. Illegitimate children shall be capable of inheriting and transmitting an inheritance, on the part of their mother, in like manner as if they had been legitimate of their mother.²

¹ Kelley's Heirs v. McGuire, 15 Ark. 555; Scull v. Vaugine, 15 Ark. 695; Byrd v. Lipscomb, 20 Ark. 19; Galloway v. Robinson, 19 Ark. 396; Campbell v. Ware, 27 Ark. 65; Beard v. Mosely, 30 Ark. 517; Oliver v. Vance, 34 Ark. 564; Kountz v. Davis, 34 Ark. 590; Loftis v. Glass, 15 Ark. 680; Gibson v. Dowell, 42 Ark. 164; Garrett v. Bean, 51 Ark. 52, 9 S. W. 435; Coolidge v. Burke, 69 Ark. 237, 62 S. W. 583; McFarlane v. Grober, 70 Ark. 371, 69 S. W. 56, 91 Am. St. Rep. 84; Johnson v. Knight of Honor, 53 Ark. 255, 13 S. W. 794, 8 L. R. A. 732; Davison v. Gibson, 56 Fed. 443, 5 C. C. A. 543; Nivens v. Nivens, 4 Ind. T. 30, 64 S. W. 606; Engleman v. Cable, 4 Ind. T. 336, 69 S. W. 895; De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624; In re Brown's Estate, 22 Okl. 216, 97 Pac. 613; Irving v. Diamond, 23 Okl. 325, 100 Pac. 557; Shulthis v. McDougal (C. C.) 162 Fed. 331-333; Shulthis v. McDougal, 170 Fed. 529, 95 C. C. A. 615; Pigeon v. Buck (Okl.) 131 Pac. 1083.

² Gregley v. Jackson, 38 Ark. 487; Brann v. Bell (C. C.) 192 Fed. 427.

§ 802. **How legitimized by subsequent marriage.**—[2525]. If a man have by a woman a child or children, and afterward shall intermarry with her, and shall recognize such children to be his, they shall be deemed and considered as legitimate.³

§ 803. **Issue of invalid marriages.**—[2526]. The issue of all marriages deemed null in law, or dissolved by divorce, shall be deemed and considered as legitimate.

§ 804. **No bar that ancestor was alien.**—[2527]. In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate is or has been, an alien.

§ 805. **No kindred to inherit, whole to go to wife or husband—Estate to escheat.**—[2528]. If there be no children, or their descendants, father, mother, nor their descendants, or any paternal or maternal kindred capable of inheriting, the whole shall go to the wife or husband of the intestate. If there be no such wife or husband, then the estate shall go to the state.⁴

§ 806. **Some children dead and some living to take per stirpes.**—[2529]. If any of the children of an intestate be living, and some be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as shall have died, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who shall have died leaving issue had been living, so that the descendants of each child who shall be dead shall inherit the same their parent would have received if living.

§ 807. **This rule to apply in every case where those entitled to inherit in equal degrees of consanguinity to intestate.**—[2530]. The rule of descent prescribed in the last preceding section shall apply in every case where the de-

³ Walker v. Roberson, 21 Okl. 894, 97 Pac. 609.

⁴ Nivens v. Nivens, 4 Ind. T. 30, 64 S. W. 606.

scendants of the intestate, entitled to share in the inheritance, shall be in equal degree of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them had all the descendants in the same degree who shall have died leaving issue been living, so that the issue of the descendants who shall have died shall respectively take the shares which their parents, if living, would have received.

§ 808. If there are no descendants, rules of descent: (1) Where estate comes by father; (2) by mother; and (3) where a new acquisition.—[2531]. In cases where the intestate shall die without descendants, if the estate come by the father, then it shall ascend to the father and his heirs; if by the mother, the estate, or so much thereof as came by the mother, shall ascend to the mother and her heirs; but if the estate be a new acquisition it shall ascend to the father for his lifetime, and then descend, in remainder, to the collateral kindred of the intestate in the manner provided in this act; and, in default of a father, then to the mother, for her lifetime; then to descend to the collateral heirs as before provided.⁵

§ 809. Estate, how to go, where no father or mother.—[2532]. The estate of an intestate, in default of a father and mother, shall go, first to the brothers and sisters, and their descendants, of the father; next, to the brothers and sisters, and their descendants, of the mother. This provision applies only where there are no kindred, either lineal or collateral, who stand in a nearer relation.

§ 810. Those of half-blood—How to inherit.—[2533]. Relations of the half-blood shall inherit equally with those of the whole blood in the same degree; and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance come

⁵ Galloway v. Robinson, 19 Ark. 396; Magness v. Arnold, 81 Ark. 103; Hogan v. Finley, 52 Ark. 55, 11 S. W. 1035.

to the intestate by descent, devise, or gift, of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

§ 811. In cases not herein provided for, descent to be according to common law.—[2534]. In all cases not provided for by this act, the inheritance shall descend according to the course of the common law.

§ 812. All who inherit, to do so as tenants in common.—[2535]. Whenever an inheritance, or a share of an inheritance, shall descend to several persons, under the provisions of this act, they shall inherit as tenants in common, in proportion to their respective shares or rights.

ADVANCEMENT

§ 813. By settlement or portion to child, how reckoned, and effect of.—[2536]. If any child of an intestate shall have been advanced by him in his lifetime, by settlement or portion of real or personal estate, or both of them, the value thereof shall be reckoned, for the purpose of this section, only as part of the real and personal estate of such intestate descendible to his heirs, and to be distributed to his next of kin, according to law; and, if such advancement be equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as herein reckoned, then such child and his descendants shall be excluded from any share of the real and personal estate of the intestate.

§ 814. When not equal to share of estate.—[2537]. In cases where such advancement is not equal to the share that such child or relative, and his descendants, shall be entitled to receive, they shall be entitled to receive so much of the real and personal estate as shall be sufficient to make all the shares of the heirs in such real and personal estate and advancement to be as nearly equal as possible.

§ 815. **Value of such advancement, how ascertained.**—[2538]. The value of any real or personal estate so advanced shall be deemed to be that, if any, which was acknowledged by the person receiving the same by any receipt, in writing, specifying the value; if no such written evidence exists, then such value shall be estimated according to its value at the time of advancing such money or property.

§ 816. **Maintenance, education, etc., not to be taken as advancement.**—[2539]. The maintaining, educating or giving money to a child or heir, without a view to a portion or settlement in life, shall not be an advancement within the meaning of this act.

CONSTRUCTION

§ 817. **Of term "real estate."**—[2540]. The term "real estate," as used in this act, shall be construed to include every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of the intestate, seized or possessed thereof in any manner, other than by lease for years and estate for the life of another person.

§ 818. **Of term "inheritance."**—[2541]. The term "inheritance," as used in this act, shall be understood to mean real estate, as herein defined, descended according to the provisions of this act.

§ 819. **Where person described as "living."**—[2542]. Whenever, in any part of this act, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent came; and, when any person is described as having died, it shall be understood that he died before the intestate.

§ 820. **Of expression "come on part of father" or "on part of mother."**—[2543]. The expression used in this act, "where the estate shall have come to the intestate on the part of the father," or "mother," as the case may be, shall

be construed to include every case where the inheritance shall have come to the intestate by gift, devise or descent from the parent referred to, or from any relative of the blood of such parent.

§ 821. Heir at law may be made by declaration in writing.—[2544]. When any person may desire to make a person his heir at law, it shall be lawful to do so by a declaration in writing in favor of such person, to be acknowledged before any judge, justice of the peace, clerk of any court, or before any court of record in this state.

§ 822. Declaration must be recorded before of effect.—[2545]. Before said declaration shall be of any force or effect, it shall be recorded in the county where the said declarant may reside, or in the county where the person in whose favor such declaration is made may reside.*

* Act Jan. 12, 1853; Engleman v. Cable, 4 Ind. T. 336, 69 S. W. 897; De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624; Irving v. Diamond, 23 Okl. 325, 100 Pac. 557.

CHAPTER 57

INDIAN STATUTES OF DESCENT AND DISTRIBUTION

§ 823. Cherokee statute of descent and distribution

(CHICKASAW STATUTE OF DESCENT AND DISTRIBUTION)

824. Descent—General rule.

825. Descent—Where neither children, husband, nor wife survives.

826. Descent—Where no descendants, husband, nor wife survives.

827. Heirs of half blood.

828. Choctaw statute of descent and distribution.

829. Descent—General rule.

830. Descent—Husband or wife.

831. Creek statutes affecting right of descent.

(CHEROKEE STATUTE OF DESCENT)

§ 823. Cherokee statute of descent and distribution.—Whenever any person shall die possessed of property not devised, the same shall descend in the following order, to-wit:

[1st]. In equal parts to the husband or wife, and the children of such intestate, and their descendants; the descendants of a deceased child, or grandchild, to take the share of the deceased parent equally among them.

[2d]. To the father and mother equally, or to the survivor of them.

[3d]. In equal parts to the brothers and sisters of such intestate, and their descendants; the descendants of brothers and sisters, to take the share of the deceased parent equally among them.

[4th]. When there are none of the foregoing persons to inherit, the property of such deceased person shall go to his next of kin by blood. Kindred of the whole and half blood, in the same degree, shall inherit equally.

[5th]. The property of intestates, who have no surviving relative to inherit as above, shall escheat to the

treasury of the Nation, to be placed to the credit of the orphan fund.¹

(CHICKASAW STATUTE OF DESCENT AND DISTRIBUTION)

§ 824. **Descent—General rule.—**[1]. Be it enacted by the Legislature of the Chickasaw Nation, that from and after the passage of this act, the property of all persons who die intestate or without a will, shall descend to the legal wife or husband, and their children.

§ 825. **Descent—Where neither children, husband nor wife survives.—**[2]. Be it further enacted, that in case such deceased person has neither wife, nor husband, nor children his or her grandchildren (if any), shall inherit the estate.

§ 826. **Descent—Where no descendants, husband nor wife survives.—**[3]. Be it further enacted, that in case there be no grandchildren, then the brother or sister shall inherit the estate, and the next in kin shall be the father and mother, or either of them.

§ 827. **Heirs of half blood.—**[4]. Be it further enacted, that in case such person had neither wife nor husband, children or grandchildren, brother or sister, father or mother, then the property shall descend to the half brothers and sisters of the deceased and their legal issue.²

(CHOCTAW STATUTE OF DESCENT)

§ 828. **Choctaw statute of descent and distribution.—**[12]. The property of all persons who die intestate or without a will, shall descend to his legal wife, or husband and their children; and in case such deceased person has

¹ Section 518 of the Laws of the Cherokee Nation of 1892. See *Nivens v. Nivens*, 4 Ind. T. 574, 76 S. W. 114; *Id.*, 133 Fed. 39, 66 C. C. A. 145.

² From a publication known as the "Constitution, Treaties and Laws of the Chickasaw Nation" and from an act approved Oct. 12, 1876, entitled "An act in relation to the descent of property."

no wife or husband nor children, his or her grandchildren (if any) shall inherit the estate; and in case there is no grandchild, the father or mother of such deceased person, or either of them shall heir the estate; and in case such deceased person has neither wife nor husband, nor children or grandchildren, or father or mother, his or her estate shall go to his or her brothers and sisters, and if none to their lawful children. Should there be none of the above mentioned relatives to intestate deceased person, the estate shall descend to the half brothers and sisters of the deceased person and to their legal issue.*

(CREEK LAW OF DESCENT AND CREEK LEGISLATION AFFECT-
ING WHO MAY INHERIT)

§ 829. **Descent—General rule.**—[6]. Be it further enacted that if any person die, without a will, having property and children, the property shall be equally divided among the children by disinterested persons and in all cases where there are no children, the nearest relation shall inherit the property.

§ 830. **Descent—Husband or wife.**—[8]. The lawful or acknowledged wife of a deceased husband shall be entitled to one-half of the estate, if there are no other heirs, and an heir's part if there should be other heirs in all cases where there is no will. The husband surviving shall inherit of a deceased wife in like manner.

§ 831. **Creek statutes affecting right of descent.**—Section 1 of chapter 10 of Perryman's Compilation of the Creek Laws of 1890, affecting the right of inheritance by noncitizens:

"All noncitizens not previously adopted, and being married to citizens of this nation, or having children entitled to citizenship, shall have the right to live in this nation and

* From page 151, Durant's Code 1894.

enjoy all privileges enjoyed by other citizens, except in participation in the annuities and final participation in the lands.”⁴

⁴ From chapter of Perryman's Compilation Creek Laws of 1890. *De Graffenreid v. Iowa Land & Trust Co.*, 20 Okl. 687, 95 Pac. 624; *Bodle v. Shoenfelt*, 22 Okl. 94, 97 Pac. 558; *Irving v. Diamond*, 23 Okl. 325, 100 Pac. 557; *Hooks v. Kennard*, 28 Okl. 457, 114 Pac. 747; *Sanders v. Sanders*, 28 Okl. 59, 117 Pac. 338; *Barnett v. Way*, 29 Okl. 780, 119 Pac. 418; *Divine v. Harmon*, 30 Okl. 820, 121 Pac. 219; *Morley v. Fewel*, 32 Okl. 452, 122 Pac. 700; *Brady v. Sizemore*, 33 Okl. 169, 124 Pac. 615; *Shellenbarger v. Fewel*, 34 Okl. 79, 124 Pac. 617; *Reynolds v. Fewel*, 34 Okl. 112, 124 Pac. 623; *Bilby v. Brown*, 34 Okl. 738, 126 Pac. 1024; *Oklahoma Land Co. v. Thomas*, 34 Okl. 681, 127 Pac. 8; *Ground v. Dingman*, 33 Okl. 760, 127 Pac. 1078; *Shulthis v. McDougal*, 170 Fed. 529, 95 C. C. A. 615; *Woodward v. De Graffenried* (Okl.) 131 Pac. 162; *Davison v. Gibson*, 56 Fed. 443, 5 C. C. A. 543; *Brann v. Bell* (C. C.) 192 Fed. 427; *Armstrong v. Wood* (C. C.) 195 Fed. 137; *Reed v. Welty* (D. C.) 197 Fed. 419.

CHAPTER 58

DOWER

(CHAPTER 53, MANSFIELD'S DIGEST OF THE STATUTES OF 1884, ENTITLED "DOWER," PUT IN FORCE IN THE INDIAN TERRITORY BY THE ACT OF MAY 2, 1890, CHAPTER 182, 26 STAT. 81)

- § 832. Widow's dower in lands.
- 833. Widow of alien to have dower.
- 834. Lands exchanged.
- 835. Mortgage not to affect widow's dower.
- 836. Purchase money mortgage superior to dower.
- 837. Dower in surplus over mortgage.
- 838. Dower does not attach to certain lands.
- 839. Divorce for misconduct bars dower.
- 840. Conveyance in lieu of dower.
- 841. Assent in such case, how given.
- 842. How assent may bar dower.
- 843. Cases in which wife may elect.
- 844. When provision in lieu of dower forfeited.
- 845. Husband's conveyance not to bar widow's dower.
- 846. May tarry in mansion house.
- 847. Commissioners to lay off dower.
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- 850. Widow's dower, at her death, descends, how.
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- 854. Renunciation—How evidenced.
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- 856. Widow may relinquish dower and take absolutely a child's share.
- 857. Relinquishment—How made—When and where to be filed.
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- 859. Widow shall be endowed of all the lands.
- 860. Duty of heir to assign dower.
- 861. Proceedings for assignment of dower.
- 862. Minor heirs in such cases to act by their guardians.
- 863. How widow may proceed when dower not assigned in due time—Form of petition for dower.
- 864. When petition stands for hearing—Order thereon.
- 865. Constructive service.
- 866. Verification of pleading not required.
- 867. Who may be admitted to defend.
- 868. A party may contest right of petitioner by answer—Questions, how tried.

- § 869. Commissioners to be appointed and their duties.
- 870. Report of commissioners.
- 871. Proceedings on report.
- 872. Order when lands will not admit of division.
- 873. Widow may recover and defend possession of her dower.
- 874. Heir's alienation of land not to affect widow's dower.
- 875. Of the crop growing on the land assigned as dower at widow's death.
- 876. Costs to be apportioned, etc.

§ 832. **Widow's dower in lands.**—[2571]. A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form.¹

§ 833. **Widow of alien to have dower.**—[2572]. The widow of an alien shall be entitled to dower of the estate of her husband in the same manner as if such alien had been a native-born citizen of this state.

§ 834. **Lands exchanged.**—[2573]. If a husband seized of an estate of inheritance in lands exchange it for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

§ 835. **Mortgage not to affect widow's dower.**—[2574]. Where a person seized of an estate of inheritance in land

¹ Kirby v. Vantrece, 26 Ark. 368; Tate v. Jay, 31 Ark. 576; Pennington's Ex'rs v. Yell, 11 Ark. 212, 53 Am. Dec. 262; Webb v. Smith, 40 Ark. 17; Watson v. Billings, 38 Ark. 278, 42 Am. Rep. 1; Miller v. Gibbons, 34 Ark. 212; Livingston v. Cochran, 33 Ark. 296; Cockrill v. Armstrong, 31 Ark. 580; Pillow v. Wade, 31 Ark. 678; Countz v. Markling, 30 Ark. 17; Drewry v. Montgomery, 28 Ark. 256; Tiner v. Christian, 27 Ark. 306; Apperson v. Bolton, 29 Ark. 418; Rockafellow v. Peay, 40 Ark. 69; McWhirter v. Roberts, 40 Ark. 283; Melton v. Lane, 29 Okl. 383, 118 Pac. 141, Ann. Cas. 1913A, 628; Clarkson v. Washington (Okl.) 131 Pac. 935.

shall have executed a mortgage of such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged as against every person, except the mortgagee and those claiming under him.²

§ 836. **Purchase money mortgage superior to dower.**—[2575]. Where a husband shall purchase lands during coverture, and shall mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower as against all other persons.³

§ 837. **Dower in surplus over mortgage.**—[2576]. When, in such case, the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of the decree of a court of chancery, and any surplus shall remain after the payment of the moneys due on such mortgage and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus for her life as her dower.

§ 838. **Dower does not attach to certain lands.**—[2577]. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he have acquired an absolute estate therein during the marriage.

§ 839. **Divorce for misconduct bars dower.**—[2578]. In case of divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.⁴

§ 840. **Conveyance in lieu of dower.**—[2579]. When an estate in land shall be conveyed to a person and his in-

² *Shulthis v. MacDougal* (C. C.) 162 Fed. 331.

³ *Birnie v. Main*, 29 Ark. 591.

⁴ *Wood v. Wood*, 59 Ark. 441, 27 S. W. 641, 28 L. R. A. 157, 43 Am. St. Rep. 42.

tended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of erecting a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim for dower of such wife in any land of the husband.

§ 841. **Assent in such case, how given.**—[2580]. The assent of the wife to such jointure shall be evinced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

§ 842. **How assent may bar dower.**—[2581]. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to by such wife, as above provided, be a bar to any right or claim of dower of such wife in all the lands of her husband.

§ 843. **Cases in which wife may elect.**—[2582]. If before her marriage, but without her assent, or if, after her marriage, land shall be given or assured for the jointure of a wife, or a pecuniary provision be made for her in lieu of dower, she shall make her election whether she will take such jointure or pecuniary provision, or whether she will be endowed of the land of her husband, but she shall not be entitled to both.

[2583]. If land be devised to a woman, or a pecuniary or other provision be made for her by will in lieu of her dower, she shall make her election whether she will take the land so devised or the provision so made, or whether she will be endowed of the lands of her husband.⁵

[2584]. When a woman shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure, devise or pecuniary provision, unless within one year after

⁵ Goodrum v. Goodrum, 56 Ark. 532, 20 S. W. 353; Pumphy v. Pumphy, 52 Ark. 193, 12 S. W. 390.

the death of her husband she shall enter on the lands to be assigned to her for her dower, or commence proceedings for the recovery or assignment thereof.

§ 844. When provision in lieu of dower forfeited.—[2585]. Every jointure, devise and pecuniary provision, in lieu of dower, shall be forfeited by the woman for whose benefit it shall be made, in the same cases in which she would forfeit her dower; and, upon such forfeiture, any estate so conveyed for jointure, and every pecuniary provision so made, shall immediately vest in the person, or his legal representatives, in whom they would have vested, on the determination of her interest therein, by the death of such woman.

§ 845. Husband's conveyance not to bar widow's dower.—[2586]. No act, deed or conveyance, executed or performed by the husband without the assent of his wife, evinced by the acknowledgment thereof in the manner required by law, shall pass the estate of a married woman; and no judgment or decree confessed or recovered against him and no laches, default, covin or crime of the husband shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

§ 846. May tarry in mansion house.—[2587]. A widow may tarry in the mansion or chief dwelling-house of her husband for two months after his death, whether her dower be sooner assigned her or not, without being liable to any rent for the same; and, in the meantime, she shall have a reasonable sustenance out of the estate of her husband.*

[2588]. If the dower of any widow is not assigned and laid off to her within two months after the death of her husband, she shall remain and possess the mansion or chief dwelling-house of her late husband, together with the farm

* See Const., art. 9, § 6.

thereto attached, free of all rent, until her dower shall be laid off and assigned to her.⁷

§ 847. **Commissioners to lay off dower.**—[2589]. In all assignments of dower to any widow, it shall be the duty of the commissioners who may be appointed to lay off the dower (if the estate will permit without essential injury) so to lay off the dower in the lands of the deceased husband that the usual dwelling of the husband and family shall be included in such assignment of dower to the widow.⁸

[2590]. The commissioners appointed to lay off dower in the lands of the deceased husband shall, at the request of the widow to be endowed, lay off the same on any part of the lands of the deceased, whether the same shall include the usual dwelling of the husband and family or not: Provided, the same can be done without essential injury to such estate.⁹

§ 848. **Dower in estate and choses in action.**—[2591]. A widow shall be entitled, as part of her dower, absolutely and in her own right, to one-third part of the personal estate, including cash on hand, bonds, bills, notes, book accounts and evidences of debt whereof the husband died seized or possessed.¹⁰

§ 849. **Dower in lands and personalty when no children.**—[2592]. If a husband die, leaving a widow and no children, such widow shall be endowed of one-half of the real

⁷ Trimble v. James, 40 Ark. 393; Mock v. Pleasants, 34 Ark. 63; Horton v. Hilliard, 58 Ark. 298, 24 S. W. 242.

⁸ Rev. St. 1837, c. 52, §§ 1-19; Horton v. Hilliard, 58 Ark. 298, 24 S. W. 242.

⁹ Act Jan. 15, 1857.

¹⁰ Hill's Adm'rs v. Mitchell, 5 Ark. 608; Mulhollan v. Thompson, 13 Ark. 232; Meniffee's Adm'rs v. Meniffee, 8 Ark. 9; James v. Marcus, 18 Ark. 421; McClure v. Owens, 32 Ark. 443; Street v. Saunders, 27 Ark. 554; Gibson v. Dowell, 42 Ark. 164; Rev. St. 1837, c. 52, § 20; Act Feb. 21, 1859 (Laws 1858-59, p. 299), § 1; Act March 8, 1867 (Laws 1867-68, p. 277).

estate of which such husband died seized, and one-half of the personal estate, absolutely and in her own right.¹¹

§ 850. **Widow's dower, at her death, descends, how.—**[2593]. At the death of any widow who hath dower in land, such property shall descend in accordance with the will of the deceased husband, or, if the husband died intestate, then to descend in accordance with the law for the distribution of intestate's estate.

§ 851. **Devise of real estate to the wife deemed in lieu of dower.—**[2594]. If any husband shall devise and bequeath to his wife any portion of his real estate of which he died seized, it shall be deemed and taken, in lieu of dower, out of the estate of such deceased husband, unless such testator shall, in his will, declare otherwise.¹²

§ 852. **Widow has her election in such cases.—**[2595]. In cases of provision made by will for widows, in lieu of dower, such widow shall have her election to accept the same or be endowed of the lands and personal property of which her husband died seized.

§ 853. **Widow may elect.—**[2596]. If a widow, for whom provision has been made by will, elect to be endowed of the lands and personal property of which her husband died seized, she shall convey, by deed of release and quitclaim, to the heirs of such estate the land so to her devised and bequeathed, which deed shall be acknowledged or proven and recorded as other deeds for real estate are required to be acknowledged or proven and recorded.

§ 854. **Renunciation—How evidenced.—**[2597]. Such renunciation of the devise or bequest by deed, as provided for in the last preceding section, shall be deemed a sufficient notice of the renunciation of the interest of such widow in all the benefits she might claim by such will in the lands of such deceased husband.

¹¹ *Brown v. Collins*, 14 Ark. 421.

¹² *Apperson v. Bolton*, 29 Ark. 418.

§ 855. **Renunciation—When must be filed.**—[2598]. Such renunciation by deed shall be executed within eighteen months after the death of such husband, or the widow will be deemed to have elected to take the devise and bequest contained in such will.¹³

§ 856. **Widow may relinquish dower and take absolutely a child's share.**—[2599]. The widow of any deceased person, who shall file in the office of the clerk of the court of probate, or with the probate court of the proper county, a relinquishment of her right of dower in and out of the estate of her deceased husband, shall be entitled to receive of the estate of which her said husband died seized and possessed, whether real, personal or mixed, a portion or share thereof, absolutely in her own right, equal to that of a child, which shall be set aside and delivered to her as now provided by law for dower.¹⁴

§ 857. **Relinquishment—How made—When and where to be filed.**—[2600]. Said relinquishment shall be in writing and acknowledged before the clerk or some justice of the peace, and filed within sixty days after the grant of letters of administration on the estate of the decedent.

§ 858. **Laws vesting certain estates in widow and children not repealed.**—[2601]. Nothing herein contained shall be so construed as to repeal any law vesting estates worth less than three hundred dollars in the widow and children of deceased persons.¹⁵

§ 859. **Widow shall be endowed of all the lands.**—[2602]. A widow shall be endowed of lands sold in the lifetime of the husband without her consent in legal form against all creditors of the estate.¹⁶

¹³ Rev. St. 1837, c. 52, §§ 21–27.

¹⁴ Mack v. Johnson, 59 Ark. 333, 27 S. W. 231.

¹⁵ Act Nov. 29, 1862 (Laws 1862, p. 58).

¹⁶ Tate v. Jay, 31 Ark. 576.

§ 860. **Duty of heir to assign dower.**—[2603]. It shall be the duty of the heir at law of any estate, of which the widow is entitled to dower, to lay off and assign such dower as soon as practicable after the death of the husband of such widow.¹⁷

§ 861. **Proceedings for assignment of dower.**—[2604]. If such dower assigned by the heir at law be accepted by the widow, the heir at law shall make a statement of such assignment, specifying what lands have been assigned, and the acceptance of such widow shall be indorsed thereon; which statements and specification of dower, and acceptance thereof, shall be proved or acknowledged by both parties, and filed with and recorded by the clerk of the court of probate, which will then be a sufficient assignment of dower, and shall bar any further demand for dower in the property specified in the statement of dower.

§ 862. **Minor heirs in such cases to act by their guardians.**—[2605]. If the heir to any estate be a minor, he shall act, in the assignment of dower, by his guardian.¹⁸

§ 863. **How widow may proceed when dower not assigned in due time—Form of petition for dower.**—[2606]. If dower be not assigned to the widow within one year after the death of her husband, or within three months after demand made therefor, she may file in the court of probate, or in the clerk's office thereof, in vacation, a written petition in which a description of the lands in which she claims dower, the names of those having an interest therein and the amount of such interest shall be briefly stated in ordinary language, with a prayer for the allotment of dower; and, thereupon, all persons interested in the prop-

¹⁷ *Hill's Adm'rs v. Mitchell*, 5 Ark. 608; *Morrill v. Meniffee's Adm'rs*, 5 Ark. 629; *Meniffee's Adm'rs v. Meniffee*, 8 Ark. 9; *Trimble v. James*, 40 Ark. 393; *Jacks v. Dyer*, 31 Ark. 334; *Reed v. Ash*, 30 Ark. 775.

¹⁸ Rev. St. 1837, c. 52, §§ 28-31.

erty shall be summoned to appear and answer the petition on the first day of the next term of the court.¹⁹

§ 864. **When petition stands for hearing—Order thereon.—**[2607]. Upon a summons being served upon all who have an interest in the property ten days before the commencement of the term, the court may make an order for the allotment of dower in accordance with the law of dower.²⁰

§ 865. **Constructive service.—**[2608]. Parties interested may be constructively summoned as provided by law in other cases.

§ 866. **Verification of pleading not required.—**[2609]. No verification shall be required to the petition or answer.

§ 867. **Who may be admitted to defend.—**[2610]. If the petition is filed against infants, married women or persons of unsound mind, the guardian, committee or husband may appear and defend for them and protect their interests; and, if they do not, the court shall appoint some discreet person for that purpose.²¹

§ 868. **A party may contest right of petitioner by answer—Questions, how tried.—**[2611]. If any person summoned, as provided in sections 2606 and 2607, desires to contest the right of the petitioner, or the statements in the petition, he shall do so by a written answer, and the questions of law and fact thereupon arising shall be tried and determined by the court upon the petition, answer, exhibits and other testimony.²²

¹⁹ *McWhirter v. Roberts*, 40 Ark. 283; *Livingston v. Cochran*, 33 Ark. 296; *Stidham v. Matthews*, 29 Ark. 650; Rev. St. 1837, c. 52, § 32; Civil Code 1869, § 538; *Burdette v. Burdette*, 26 Okl. 416, 109 Pac. 922, 35 L. R. A. (N. S.) 964.

²⁰ Rev. St. 1837, c. 52, § 39; Civil Code 1869, § 539; *Hewitt v. Cox*, 55 Ark. 225, 15 S. W. 1026, 17 S. W. 873; *Neal v. Robertson*, 55 Ark. 79, 17 S. W. 587.

²¹ Civil Code 1869, §§ 540, 543 and 548.

²² Rev. St. 1837, c. 52, § 37; Civil Code 1869, § 541.

§ 869. **Commissioners to be appointed and their duties.**—[2612]. The court shall, in all cases, when it orders and decrees dower to any widow, appoint three commissioners, of the vicinity, who shall proceed to the premises in question, and, by survey and measurement, lay off and designate, by proper metes and bounds, the dower of such widow in accordance with the decree of the court.

§ 870. **Report of commissioners.**—[2613]. Such commissioners shall make a detailed report of their proceedings to the next term of the court.²³

§ 871. **Proceedings on report.**—[2614]. Upon such report being returned the court may confirm or set the same aside, or remand it to the commissioners for correction. If approved by the court, said report shall be entered of record and be conclusive on the parties.²⁴

§ 872. **Order when lands will not admit of division.**—[2615]. In cases where lands or tenements will not admit of division, the court, being satisfied of that fact, or on the report of the commissioners to that effect, shall order that such tenements or lands be rented out, and that one-third part of the proceeds be paid to such widow, in lieu of her dower in such lands and tenements.²⁵

§ 873. **Widow may recover and defend possession of her dower.**—[2616]. If the land assigned and laid off to any widow be deforced from her possession, she shall have her action for the recovery of possession thereof, with double damages for such deforcement; or she may sue for the damages alone, and recover double the actual damages sustained, from time to time, until she be put in possession of her dower, held by such deforcer or detainer.

§ 874. **Heir's alienation of land not to affect widow's dower.**—[2617]. If the heir alien lands of which a widow

²³ Rev. St. 1837, c. 52, §§ 40, 41.

²⁴ Rev. St. 1837, c. 52, § 41; Civil Code 1869, § 545.

²⁵ Rev. St. 1837, c. 52, § 42.

is entitled to dower, she shall still be decreed her dower in such lands so aliened, in whose hand soever the land may be.

§ 875. Of the crop growing on the land assigned as dower at widow's death.—[2618]. A widow may bequeath the crop in the ground of the land held by her in dower at the time of her death. If she die intestate, it shall go to her administrator.²⁶

§ 876. Costs to be apportioned, etc.—[2619]. The cost of allotting dower shall be apportioned among the parties in the ratio of their interests, and the costs arising from any contest of fact or law shall be paid by the party adjudged to be in the wrong.²⁷

²⁶ Rev. St. 1837, c. 52, §§ 21-32, 46-49.

²⁷ Civil Code 1869, § 547.

CHAPTER 59

GENERAL ALLOTMENT ACT APPROVED FEBRUARY 8, 1887

(CHAPTER 119, 24 STAT. 388)

- § 877. An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes.
878. Allotments—By whom selected.
879. Allotments—Preference right in selection.
880. Allotments—Selection—By whom made.
881. Allotments—By whom made.
882. Allotments may be selected out of public land.
883. Trust patent issue to allottees.
884. Restrictions upon alienation.
885. Descent and partition.
886. Secretary authorized to purchase reservations.
887. Lands ceded to be held for settlement.
888. Patents to settlers.
889. Allotment to religious society.
890. Allottees subject to laws of state or territory.
891. Allottees become citizens of the United States.
892. Irrigated land.
893. Certain tribes excepted from provision of act.
894. Appropriation for survey.
895. Eminent domain—Right to grant reserved.
896. Southern Utes—Removal of.

§ 877. An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for

agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: Provided, that in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: And provided further, that where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: And provided further, that when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.¹

§ 878. Allotments—By whom selected.—[2]. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for

¹ *Fairbanks v. United States*, 223 U. S. 216, 32 Sup. Ct. 292, 56 L. Ed. 409; *Bowling v. United States*, 191 Fed. 19, 111 C. C. A. 561; *Leecy v. United States*, 190 Fed. 289, 111 C. C. A. 254.

their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection.²

§ 879. Allotments—Preference right in selection.—[2]. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act:

§ 880. Allotments—Selection—By whom made.—[2]. Provided, that if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

§ 881. Allotments—By whom made.—[3]. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

§ 882. Allotments may be selected out of public land.—[4]. That where any Indian not residing upon a reserva-

² *Wheeler v. Petite* (C. C.) 153 Fed. 471.

tion, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided.

And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

§ 883. Trust patent issue to allottees.—[5]. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the state or territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, that the President of

the United States may in any case in his discretion extend the period.

§ 884. **Restrictions upon alienation.**—[5]. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void:³

§ 885. **Descent and partition.**—[5]. Provided, that the law of descent and partition in force in the state or territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the state of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act:⁴

§ 886. **Secretary authorized to purchase reservations.**—[5]. And provided further, that at any time after lands

³ *United States v. Choctaw Nation*, 179 U. S. 494, 21 Sup. Ct. 149, 45 L. Ed. 291; *United States v. Rickert*, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532; *In re Heff*, 197 U. S. 488, 25 Sup. Ct. 506, 49 L. Ed. 848; *Oregon v. Hitchcock*, 202 U. S. 60, 26 Sup. Ct. 568, 50 L. Ed. 935; *McKay v. Kalyton*, 204 U. S. 458, 27 Sup. Ct. 346, 51 L. Ed. 566; *Flournoy Live Stock & Real Estate Co. v. Beek*, 163 U. S. 686, 16 Sup. Ct. 1201, 41 L. Ed. 302; *United States v. Gardner*, 133 Fed. 285, 66 C. C. A. 663; *United States v. Thurston County, Neb.* (C. C.) 143 Fed. 287, 74 C. C. A. 425; *United States v. Dooley* (C. C.) 151 Fed. 697; *Wheeler v. Petite* (C. C.) 153 Fed. 471; *Bond v. United States* (C. C.) 181 Fed. 613; *Goodrum v. Buffalo*, 162 Fed. 819, 89 C. C. A. 525; *United States v. Rundell* (C.C.) 181 Fed. 887; *United States v. Bellm* (C. C.) 182 Fed. 161; *United States v. La Clair* (C. C.) 184 Fed. 128; *United States v. Park Land Co.* (C. C.) 188 Fed. 383; *United States v. La Roque*, 198 Fed. 645, 117 C. C. A. 349; *Mayes v. Cherokee Strip Live Stock Ass'n*, 58 Kan. 712, 51 Pac. 215; *Williams v. Steinmetz*, 16 Okl. 104, 82 Pac. 986; *Frazee v. Piper*, 51 Wash. 278, 98 Pac. 760; *Starr v. Long Jim*, 52 Wash. 138, 100 Pac. 194; *In re House's Heirs*, 132 Wis. 212, 112 N. W. 27.

⁴ *Finley v. Abner*, 129 Fed. 734, 64 C. C. A. 262; *Beam v. United States* (C. C.) 153 Fed. 474; *Smith v. Bonifer* (C. C.) 154 Fed. 883; *Bonifer v. Smith*, 166 Fed. 846, 92 C. C. A. 604; *United States v. Bellm* (C. C.) 182 Fed. 161; *United States v. Park Land Co.* (C. C.) 188 Fed. 383; *Guyatt v. Kautz*, 41 Wash. 115, 83 Pac. 9.

have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress:

§ 887. **Lands ceded to be held for settlement.**—[5]. Provided, however, that all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education:

§ 888. **Patents to settlers.**—[5]. And provided further, that no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void.

And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservations belonged; and the same, with interest thereon

at three per cent. per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof.

The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto.

§ 889. Allotment to religious society.—[5]. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law.

And hereafter in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

§ 890. Allottees subject to laws of state or territory.—[6]. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside; and no territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law.

§ 891. Allottees become citizens of the United States.—[6]. And every Indian born within the territorial limits of the United States to whom allotments shall have been made

under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.⁵

§ 892. *Irrigated land.*—[7]. That in cases where the use of water for irrigation is necessary, to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

§ 893. *Certain tribes excepted from provisions of act.*—[8]. That the provision of this act shall not extend to the

⁵ *Jones v. Meehan*, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; *In re Heff*, 197 U. S. 488, 25 Sup. Ct. 506, 49 L. Ed. 848; *Goudy v. Meath*, 203 U. S. 146, 27 Sup. Ct. 48, 51 L. Ed. 130; *United States v. Paine Lumber Co.*, 206 U. S. 467, 27 Sup. Ct. 697, 51 L. Ed. 1139; *Starr v. v. Campbell*, 208 U. S. 527, 28 Sup. Ct. 365, 52 L. Ed. 602; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 178, 55 L. Ed. 738; *Farrell v. United States*, 110 Fed. 942, 49 C. C. A. 183; *United States v. Kopp* (D. C.) 110 Fed. 160; *United States v. Kiya* (D. C.) 126 Fed. 879; *Bird v. Terry* (C. C.) 129 Fed. 472; *United States v. Dooley* (C. C.) 151 Fed. 697; *Ex parte Savage* (C. C.) 158 Fed. 205; *United States v. Allen*, 179 Fed. 13, 103 C. C. A. 1; *In re Now-ge-zhuk*, 69 Kan. 410, 76 Pac. 877; *Tomkins v. Campbell*, 129 Wis. 93, 108 N. W. 216; *In re Minook*, 2 Alaska, 200; *Moore v. Nah-con-be*, 72 Kan. 169, 83 Pac. 400; *State ex rel. Crawford v. Norris*, 37 Neb. 299, 55 N. W. 1086.

territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osages, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the state of New York, nor to that strip of territory in the state of Nebraska adjoining the Sioux Nation on the south added by executive order.

§ 894. **Appropriation for survey.**—[9]. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

§ 895. **Eminent domain—Right to grant reserved.**—[10]. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

§ 896. **Southern Utes—Removal of.**—[11]. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

CHAPTER 60.

AMENDMENTS TO AND SUBSEQUENT LEGISLATION AFFECT- ING THE GENERAL ALLOTMENT ACT.

- § 897. Preamble to Act February 28, 1891.
- 898. President may direct allotments.
- 899. General Allotment Act to control where applicable.
- 900. Equalization of allotments.
- 901. Leases.
- 902. Allotment on public land subject to General Allotment Act.
- 903. Descent—How determined.
- 904. Citizenship accorded Indians in Indian Territory by Act March 3, 1901.
- 905. Amendment of May 8, 1906, to section 6 of General Allotment Act.
- 906. Act of June 21, 1906, amending General Allotment Act so as to exempt allotted lands from alienation on debts contracted before final patent.
- 907. Act of June 21, 1906, authorizing President to extend trust period.
- 908. Alienation of inherited Indian lands as affected by Act May 27, 1902.
- 909. Act of June 19, 1902, making the General Allotment Act applicable to allotted lands.
- 909a. Authorizing Secretary to make Indian allotments on public domain.

§ 897. Preamble to Act February 28, 1891.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section one of the Act entitled “An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes,” approved February eighth, eighteen hundred and eighty-seven, be, and the same is hereby, amended so as to read as follows:¹

§ 898. President may direct allotments.—[1]. That in all cases where any tribe or band of Indians has been, or

¹ This and the succeeding six sections constitute the amendment of February 28, 1891, to the General Allotment Act. 26 Stat. 794, c. 383.

for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary, and to allot to each Indian located thereon one-eighth of a section of land: Provided, that in case there is not sufficient land in any of said reservations to allot lands to each individual in quantity as above provided the land in such reservation or reservations shall be allotted to each individual pro rata, as near as may be, according to legal subdivisions: Provided further, that where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty to certain classes in quantity in excess of that herein provided the President, in making allotments upon such reservation, shall allot the land to each individual Indian of said classes belonging thereon in quantity as specified in such treaty or act, and to other Indians belonging thereon in quantity as herein provided.

§ 899. General Allotment Act to control where applicable.—[1]. Provided further, that where existing agreements or laws provide for allotments in accordance with the provisions of said Act of February eighth, eighteen hundred and eighty-seven, or in quantities substantially as therein provided, allotments may be made in quantity as specified in this act, with the consent of the Indians, expressed in such manner as the President, in his discretion, may require: And provided further, that when the lands allotted, or any legal subdivision thereof, are only valuable for grazing purposes, such lands shall be allotted in double quantities.

§ 900. Equalization of allotments.—[2]. That where allotments have been made in whole or in part upon any reservation under the provision of said Act of February eighth, eighteen hundred and eighty-seven, and the quantity of land in such reservation is sufficient to give each member of the tribe eighty acres, such allotments shall be revised and equalized under the provisions of this act: Provided, that no allotment heretofore approved by the Secretary of the Interior shall be reduced in quantity.

§ 901. Leases.—[3]. That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act, or any other act or treaty, cannot personally and with benefit to himself occupy or improve his allotment or any part thereof the same may be leased upon such terms, regulations and conditions as shall be prescribed by such Secretary for a term not exceeding three years for farming or grazing, or ten years for mining purposes: Provided, that where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming and agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.²

§ 902. Allotment on public land subject to General Allotment Act.—[4]. That where any Indian entitled to allot-

² *Smith v. United States* (C. C.) 142 Fed. 225; *United States v. Standard Oil Co.* (D. C.) 148 Fed. 719; *United States v. Dooley* (C. C.) 151 Fed. 697; *Barnsdall Oil Co. v. Leahy*, 195 Fed. 731, 115 C. C. A. 521; *Williams v. Steinmetz*, 16 Okl. 108, 82 Pac. 986; *Reeves & Co. v. Sheets*, 16 Okl. 342, 82 Pac. 487; *Thomas v. Gay*, 169 U. S. 264, 18 Sup. Ct. 340, 42 L. Ed. 740; *Lemmon v. United States*, 106 Fed. 650, 45 C. C. A. 518; *Sharp v. United States*, 138 Fed. 878, 71 C. C. A. 258

ment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children, in quantities and manner as provided in the foregoing section of this amending act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions provided in the act to which this is an amendment. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

§ 903. **Descent—How determined.**—[5]. That for the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of the fifth section of said act, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life, the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child:^{*} Provided, that the provisions of this act shall not be held or construed as to apply to the lands commonly called and known as the “Cher-

^{*} United States v. Bellm (C. C.) 182 Fed. 161.

okee Outlet": And provided further, that no allotment of lands shall be made or annuities of money paid to any of the Sac and Fox of the Missouri Indians who were not enrolled as members of said tribe on January first, eighteen hundred and ninety; but this shall not be held to impair or otherwise affect the rights or equities of any person whose claim to membership in said tribe is now pending and being investigated.

§ 904. **Citizenship accorded Indians in Indian Territory by Act of March 3, 1901.**—That section six of chapter one hundred and nineteen of the United States Statutes at Large numbered twenty-four, page three hundred and ninety, is hereby amended as follows, to wit: After the words "civilized life," in line thirteen of said section six, insert the words "and every Indian in Indian Territory."⁴

§ 905. **Amendment of May 8, 1906, to section 6 of General Allotment Act.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section six of an Act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the Laws of the United States and the territories over the Indians, and for other purposes," be amended to read as follows:

"Section 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside; and no territory shall

⁴ 31 Stat. 1447, c. 868; *Owen v. Dudley*, 217 U. S. 488, 30 Sup. Ct. 602, 54 L. Ed. 851; *Tiger v. Western Inv. Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. Ed. 738; *United States v. Allen* (C. C.) 171 Fed. 907; *United States v. Allen*, 179 Fed. 13, 103 C. C. A. 1; *United States v. Abrams* (C. C.) 181 Fed. 847; *Western Inv. Co. v. Kistler*, 22 Okl. 222, 97 Pac. 588; *Zevely v. Welmer*, 5 Ind. T. 646, 82 S. W. 941.

pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits, his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: Provided, that the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: Provided further, that until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: And, provided further, that the provisions of this act shall not extend to any Indians in the Indian Territory."

That hereafter when an allotment of land is made to any Indian, and any such Indian dies before the expiration of the trust period, said allotment shall be canceled and the land shall revert to the United States, and the Secretary of the Interior shall ascertain the legal heirs of such Indian, and shall cause to be issued to said heirs and in their names,

a patent in fee simple for said land, or he may cause the land to be sold as provided by law and issue a patent therefor to the purchaser or purchasers, and pay the net proceeds to the heirs, or their legal representatives, of such deceased Indian. The action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final.⁵

§ 906. Act of June 21, 1906, amending General Allotment Act so as to exempt allotted lands from alienation on debts contracted before final patent.—That the act entitled “An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes,” approved February 8, 1887, be, and is hereby, amended by adding the following:

No land acquired under the provisions of this act shall in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor.

That no money accruing for any lease or sale of lands held in trust by the United States for any Indian, shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.⁶

§ 907. Act of June 21, 1906, authorizing President to extend trust period.—That prior to the expiration of the trust period of any Indian allottee to whom a trust or other patent containing restrictions upon alienation has been or

⁵ 34 Stat. 182, c. 2348; *United States v. Sutton*, 215 U. S. 291, 30 Sup. Ct. 116, 54 L. Ed. 200; *United States v. Sutton* (D. C.) 165 Fed. 253; reversed 215 U. S. 291, 30 Sup. Ct. 116, 54 L. Ed. 200; *United States v. Allen* (C. C.) 171 Fed. 907; *Bond v. United States* (C. C.) 181 Fed. 613.

⁶ 34 Stat. 327, c. 3504.

shall be issued under any law or treaty the President may in his discretion continue such restrictions on alienation for such period as he may deem best: Provided, however, that this shall not apply to lands in the Indian Territory.⁷

§ 908. **Alienation of inherited Indian lands as affected by Act of May 27, 1902.**—[7]. That the adult heirs of any deceased Indian to whom a trust or other patent containing restrictions upon alienation has been or shall be issued for lands allotted to him may sell and convey the lands inherited from such decedent, but in case of minor heirs their interests shall be sold only by a guardian duly appointed by the proper court upon the order of such court, made upon petition filed by the guardian, but all such conveyances shall be subject to the approval of the Secretary of the Interior, and when so approved shall convey a full title to the purchaser, the same as if a final patent without restriction upon the alienation had been issued to the allottee. All allotted land so alienated by the heirs of an Indian allottee and all lands so patented to a white allottee shall thereupon be subject to taxation under the laws of the state or territory where the same is situate: Provided, that the sale herein provided for shall not apply to the homestead during the life of the father, mother or the minority of any child or children.⁸

§ 909. **Act of June 19, 1902, making the General Allotment Act applicable to allotted lands.**—In so far as not otherwise specially provided, all allotments in severalty to Indians outside of the Indian Territory, shall be made in conformity to the provisions of the Act, approved February 8, 1887, entitled "An act to provide for the allotment of lands

⁷ 34 Stat. 326, c. 3504.

⁸ 32 Stat. 275, c. 888; *United States v. Thurston County* (C. C.) 140 Fed. 456; *United States v. Thurston County*, 143 Fed. 287, 74 C. C. A. 425; *National Bank of Commerce v. Anderson*, 147 Fed. 87, 77 C. C. A. 259; *United States v. Leslie* (C. C.) 167 Fed. 670; *United States v. Bellm* (C. C.) 182 Fed. 161; *United States v. Comet Oil & Gas Co.* (C. C.) 187 Fed. 674; *United States v. Park Land Co.* (C. C.) 188 Fed. 383.

in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes"; and other general acts amendatory thereof and supplemental thereto and shall be subject to all the restrictions and carry all of the privileges incident to allotments made under said act and other general acts amendatory thereof or supplemental thereto.⁹

§ 909a. **Authorizing Secretary to make Indian allotments on public domain.**—That the Secretary of the Interior be, and he hereby is, authorized, under the direction of the President, to allot any Indian on the public domain who has not heretofore received an allotment, in such areas as he may deem proper, not to exceed, however, eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian, such allotment to be made and patent therefor issued in accordance with the provisions of the Act of February eighth, eighteen hundred and eighty-seven (Twenty-fourth Statutes at Large, three hundred and eighty-eight).¹⁰

⁹ 32 Stat. 744.

¹⁰ Act March 3, 1909, c. 263, 35 Stat. 782.

CHAPTER 61

ACT OF JUNE 25, 1910, ENTITLED AN ACT TO PROVIDE FOR DETERMINING THE HEIRS OF DECEASED INDIANS, FOR THE DISPOSITION AND SALE OF ALLOTMENTS OF DECEASED INDIANS, FOR THE LEASING OF ALLOTMENTS AND FOR OTHER PURPOSES, WITH AMENDMENT THERETO

(CHAPTER 431, 36 STAT. 855) .

- § 910. Conferring exclusive jurisdiction upon Secretary to determine the heirs of deceased allottees holding under trust patents.
- 911. Secretary may partition trust lands of deceased allottee among his heirs.
- 912. Secretary may sell inherited trust lands under such rules and regulations as he may prescribe.
- 913. Secretary authorized to issue certificates of competency to Indians holding under trust patents.
- 914. Disposition of allotted lands held under trust patent, but not applicable to Oklahoma.
- 915. Allottee may surrender trust allotment in favor of children on Secretary's approval.
- 916. Leases of trust allotments authorized on Secretary's approval, but not to exceed five years.
- 917. Taking conveyance, contract, or mortgage of land held under trust patent made a misdemeanor.
- 918. Cutting of timber on reservations and trust allotments prohibited.
- 919. Failure to extinguish fires upon reservations or allotted trust lands made a criminal offense.
- 920. Mature living and dead timber on unallotted lands may be sold on Secretary's approval.
- 921. Sale of timber on trust allotments permitted on Secretary's approval.
- 922. Section 3 of General Allotment Act amended so as to provide that allotments be made by special agents.
- 923. Inalienable patents to issue to lots in Indian villages, state of Washington.
- 924. Allotments under General Allotment Act authorized in Camp Mojave abandoned military reservation.
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- § 930. Allotments to Indians out of such lands—Repealing' provision.
- 931. Section 1 of the amendment to the General Allotment Act of February 28, 1891, amended by substitution.
- 932. Section 4 of amendment to General Allotment Act of 1891 amended by substitution.
- 933. Use of proceeds from lands on Shoshone or Wind River Reservation, Wyoming, corrected.
- 934. Reports abolished.
- 935. Repealing certain provisions of appropriation acts making appropriations for concurrent and contingent expenses.
- 936. Secretary authorized to pay funds to Sisseton and Wahpeton in Dakota and Minnesota.
- 937. Authorizing the transfer of surplus property from one Indian reservation to another.
- 938. Regulating purchase of Indian supplies.
- 939. Grant of lands to Minneapolis, Red Lake & Manitoba Railway Company, Red Lake Indian Reservation, Minnesota, amended.
- 940. Allotments out of Kiowa, Comanche and Apache Reservation to be made to enrolled members born since June 5, 1906.
- 941. Conveyance by guardians of Bunnie McIntosh and Mildred McIntosh ratified and confirmed.
- 942. Sales of timber on pine lands in Chippewa Indian Reservation, Minnesota.
- 943. Secretary authorized to withdraw from entry certain lands in Minnesota for Indian village sites.
- 944. Classification of lands in Flathead Reservation and sale of certain classes.
- 945. Act authorizing allotment on Colville Indian Reservation amended.
- 946. Allotments to Indians in national forest reservations allowed.
- 947. Deed to deceased grantor operates to vest title in heirs, devisees, or assigns.
- 948. Only section 32 of this act to apply to Osages and Five Civilized Tribes.
- 948a. Act of February 14, 1913, amending section 2 of the Act of June 25, 1910.
- 948b. Act not applicable to Five Civilized Tribes and Osages.

§ 910. Conferring exclusive jurisdiction upon secretary to determine the heirs of deceased allottees holding under trust patents.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee-simple patent, without having made a will dis-

posing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent he may, in his discretion, cause such lands to be sold:¹

§ 911. Secretary may partition trust lands of deceased allottee among his heirs.—[1]. Provided, that if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor.

§ 912. Secretary may sell inherited trust lands under such rules and regulations as he may prescribe.—[1]. All sales of lands allotted to Indians authorized by this or any other act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of ten per centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid in deferred payments, a further amount, not exceeding fifteen per centum of the purchase price may be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in

¹ *Bond v. United States* (C. C.) 181 Fed. 613; *Pel-ata-yakot v. United States* (C. C.) 188 Fed. 387; *Parr v. Colfax*, 197 Fed. 302, 117 C. C. A. 48.

fee for such land: Provided, that the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent, as their respective interests shall appear.

§ 913. **Secretary authorized to issue certificates of competency to Indians holding under trust patents.—[1].** Provided further, that the Secretary of the Interior is hereby authorized in his discretion to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death, to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: Provided further, that hereafter any United States Indian agent, superintendent, or other disbursing agent of the Indian service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select: Provided, that the bank or banks so selected by him shall first execute to the said disbursing agent a bond, with approved surety, in such amount as will properly safeguard the funds to be deposited. Such bonds shall be subject to the approval of the Secretary of the Interior.

§ 914. **Disposition of allotted lands held under trust patent, but not applicable to Oklahoma.—[2].** That any Indian of the age of twenty-one years, or over, to whom an allotment of land has been or may hereafter be made, shall have the right, prior to the expiration of the trust period and before the issue of a fee-simple patent, to dispose of such allotment by will, in accordance with rules and regulations to be prescribed by the Secretary of the Interior: Provided, however, that no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Commissioner of Indian Affairs and the Secretary of the Interior: Provided further, that sec-

tions one and two of this act shall not apply to the state of Oklahoma.

§ 915. Allottee may surrender trust allotment in favor of children on Secretary's approval.—[3]. That in any case where an Indian has an allotment of land, or any right, title, or interest in such an allotment, the Secretary of the Interior, in his discretion, may permit such Indian to surrender such allotment, or any right, title, or interest therein, by such formal relinquishment as may be prescribed by the Secretary of the Interior, for the benefit of any of his or her children to whom no allotment of land shall have been made; and thereupon the Secretary of the Interior shall cause the estate so relinquished to be allotted to such child or children subject to all conditions which attached to it before such relinquishment.

§ 916. Leases of trust allotments authorized on Secretary's approval, but not to exceed five years.—[4]. That any Indian allotment held under a trust patent may be leased by the allottee for a period not to exceed five years, subject to and in conformity with such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds of any such lease shall be paid to the allottee or his heirs, or expended for his or their benefit, in the discretion of the Secretary of the Interior.

§ 917. Taking conveyance, contract, or mortgage of land held under trust patent made a misdemeanor.—[5]. That it shall be unlawful for any person to induce any Indian to execute any contract, deed, mortgage, or other instrument purporting to convey any land or any interest therein held by the United States in trust for such Indian, or to offer any such contract, deed, mortgage, or other instrument for record in the office of any recorder of deeds. Any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred dollars for the first offense, and if convicted for a second offense may be pun-

ished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, that this section shall not apply to any lease or other contract authorized by law to be made.

§ 918. Cutting of timber on reservations and trust allotments prohibited.—[6]. That section fifty of the act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine (Thirty-Fifth United States Statutes at Large, page one thousand and ninety-eight), is hereby amended so as to read:

"Sec. 50. Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both."

§ 919. Failure to extinguish fires upon reservations or allotted trust lands made a criminal offense.—[6]. That section fifty-three of said act is hereby amended so as to read:

"Sec. 53. Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the government,

or while the same shall remain inalienable by the allottee without the consent of the United States, shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both."

§ 920. **Mature living and dead timber on unallotted lands may be sold on Secretary's approval.**—[7]. That the mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct: Provided, that this section shall not apply to the states of Minnesota and Wisconsin.

§ 921. **Sale of timber on trust allotments permitted on Secretary's approval.**—[8]. That the timber on any Indian allotment held under a trust or other patent containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior.

§ 922. **Section 3 of General Allotment Act amended so as to provide that allotments be made by special agents.**—[9]. That section three of the act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven (Twenty-Fourth Statutes at Large, page three hundred and eighty-eight), be, and the same hereby is, amended to read as follows:

"Sec. 3. That the allotments provided for in this act shall be made by special agents appointed by the President

for such purpose, and the superintendents or agents in charge of the respective reservations on which the allotments are directed to be made, or, in the discretion of the Secretary of the Interior, such allotments may be made by the superintendent or agent in charge of such reservation, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such special allotting agents, superintendents, or agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office."

§ 923. **Inalienable patents to issue to lots in Indian villages, state of Washington.**—[10]. That the Secretary of the Interior be, and he is hereby, authorized, whenever in his opinion it shall be conducive to the best welfare and interest of the Indians living within any Indian village on any of the Indian reservations in the state of Washington, to issue a patent to each of said Indians for the village or town lot occupied by him, which patent shall contain restrictions against the alienation of the lot described therein to persons other than members of the tribe, except on approval of the Secretary of the Interior; and if any such Indian shall die subsequent to the approval of this act, and before receiving patent to the lot occupied by him, the lot to which such Indian would have been entitled if living shall be patented in his name and shall be disposed of as provided for in section one of this act.

§ 924. **Allotments under General Allotment Act authorized in Camp Mojave abandoned military reservation.**—[11]. That the Secretary of the Interior be, and he hereby is, authorized to approve allotments made within the limits of the abandoned Camp Mojave military and hay and wood reservations, as defined by the proclamation of the President dated March thirtieth, eighteen hundred and seventy, to those Indian allottees who shall be found to be entitled

to allotment, and patents shall issue to such allottees, as provided in the General Allotment Act of February eighth, eighteen hundred and eighty-seven, and the acts amendatory thereof.

§ 925. **Certain individual allotments in Nevada to be investigated by Secretary of the Interior.**—[12]. That the Secretary of the Interior be, and he is hereby, authorized and directed to investigate the allotments in the names of Sooc-oog (Red Foot), or Bill Billy, allottee numbered nine, and Mo-zo-to-be (Hair Forehead) Brown, allottee numbered eight, deceased Pahute Indians, on the public domain in the Carson (Nevada) land district, and if it be shown to his satisfaction that the allottees died without heirs he is hereby authorized and directed to cancel the said patents: Provided, that hereafter the Secretary of the Interior be, and he is hereby, authorized to investigate the allotment in the name of any deceased Indian and if it be shown to his satisfaction that the allottee died without heirs he shall report the facts to Congress with a recommendation for the cancellation of the patent issued in the name of such Indian.

§ 926. **Power sites to be reserved in Indian reservation.**—[13]. That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to reserve from location, entry, sale, allotment, or other appropriation any lands within any Indian reservation, valuable for power or reservoir sites, or which may be necessary for use in connection with any irrigation project heretofore or hereafter to be authorized by Congress: Provided, that if no irrigation project shall be authorized prior to the opening of any Indian reservation containing such power or reservoir sites the Secretary of the Interior may, in his discretion, reserve such sites pending future legislation by Congress for their disposition, and he shall report to Congress all reservations made in conformity with this act.

§ 927. **Cancellation of trust allotments on power sites by Secretary of the Interior authorized.**—[14]. That the Secretary of the Interior, after notice and hearing, is hereby authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress: Provided, that any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or reservoir site may be set aside: Provided further, that any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the area subject to irrigation by any such project.

§ 928. **Otoe and Missouri Reservation, Oklahoma—Conveyance of tract in for religious purposes authorized.**—[15]. That the Secretary of the Interior be, and he is hereby, authorized to convey by a patent in fee simple the tract of land described as the northwest quarter of the southeast quarter of section ten, township twenty-three north, range two east of the Indian meridian, containing forty acres, more or less, reserved for and occupied by the Associated Executive Committee of Friends on Indian Affairs, in the former Otoe and Missouri Reservation, in Oklahoma, for religious, mission, or school purposes, to such board of trustees as the proper officers of said society shall designate: Provided, however, that no conveyance shall be made without the consent of the Indians and the payment by said society of a just compensation for the lands to be conveyed, the price to be fixed by the Secretary of the Interior: And provided further, that the moneys derived from such source shall be deposited in the treasury of the United States to the credit of the Otoe and Missou-

ria Indians, to be expended for their benefit in the discretion of the Secretary of the Interior under such regulations as he may prescribe.

§ 929. Act to provide for acquiring right of way by railway companies through Indian reservations, approved March 2, 1899, amended.—[16]. That section one of the Act entitled "An act to provide for the acquiring of rights of way by railroad companies through Indian reservations, Indian lands, and Indian allotments, and for other purposes," approved March second, eighteen hundred and ninety-nine, be, and the same hereby is, amended by adding thereto the following:

"Provided also, that as a condition precedent to each and every grant of a right of way under authority of this act, each and every railway company applying for such grant shall stipulate that it will construct and permanently maintain suitable passenger and freight stations for the convenience of each and every townsite established by the government along said right of way."

§ 930. Allotments to Indians out of such lands—Repealing provision.—[17]. That so much of the Indian Appropriation Act for the fiscal year nineteen hundred and ten, approved March third, nineteen hundred and nine, as reads as follows, to wit: "That the Secretary of the Interior be, and he hereby is, authorized, under the direction of the President, to allot any Indian on the public domain who has not heretofore received an allotment, in such areas as he may deem proper, not to exceed, however, eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian, such allotment to be made and patent therefor issued in accordance with the provisions of the Act of February eighth, eighteen hundred and eighty-seven," be, and the same is hereby, repealed, and sections one and four of the Act of February twenty-eighth, eighteen hundred and ninety-one (Twenty-Sixth Statutes, page sev-

en hundred ninety-four), be, and the same are hereby, amended to read as follows:

§ 931. Section 1 of the Amendment to the General Allotment Act of February 28, 1891, amended by substitution.—[17]. “Sec. 1. That in all cases where any tribe or band of Indians has been or shall hereafter be located upon any reservation created for their use by treaty stipulation, act of Congress, or executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part thereof may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian. And whenever it shall appear to the President that lands on any Indian reservation subject to allotment by authority of law have been or may be brought within any irrigation project, he may cause allotments of such irrigable lands to be made to the Indians entitled thereto in such areas as may be for their best interest not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of nonirrigable agricultural land and four times the number of acres of nonirrigable grazing land: Provided, that the remaining area to which any Indian may be entitled under existing law after he shall have received his proportion of irrigable land on the basis of equalization herein established may be allotted to him from nonirrigable agricultural or grazing lands: Provided further, that where a treaty or act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty or act subject, however, to the basis

of equalization between irrigable and nonirrigable lands established herein, but in such cases allotments may be made in quantity as specified in this act, with the consent of the Indians expressed in such manner as the President in his discretion may require."

§ 932. Section 4 of amendment to General Allotment Act of 1891 amended by substitution.—[17]. "Sec. 4. That where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on the public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of nonirrigable agricultural land or one hundred sixty acres of nonirrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in the act of which this is amendatory. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior."

§ 933. Use of proceeds from lands on Shoshone or Wind River Reservation, Wyoming, corrected.—[18].

At the last clause of the fifth paragraph of section twen-

ty-seven of the Indian Appropriation Act of April fourth, nineteen hundred and ten, be, and it is hereby, amended so as to read as follows: "And the money so paid shall be subject to the provisions of the Act entitled 'An act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the state of Wyoming, and to make appropriations for carrying the same into effect,' approved March third, nineteen hundred and five."

§ 934. **Reports abolished.**—[19]. That sections four hundred and sixty-eight, four hundred and sixty-nine, and two thousand and ninety-one of the Revised Statutes of the United States be, and they are hereby, repealed.

§ 935. **Repealing certain provisions of appropriation acts making appropriations for concurrent and contingent expenses.**—[20]. That the following sections in the following Acts making appropriations for the current and contingent expenses of the Indian service, to wit: Section eight of the Act of March third, eighteen hundred and seventy-five; section eight of the Act of March second, eighteen hundred and ninety-five; section eight of the Act of March third, nineteen hundred and one; and section six of the Act of May twenty-seventh, nineteen hundred and two, be, and they are hereby, repealed.

§ 936. **Secretary authorized to pay funds to Sisseton and Wahpeton in Dakota and Minnesota.**—[21]. That the Secretary of the Interior is hereby authorized to expend for their benefit or pay to the Indians of the Sisseton and Wahpeton tribe, per capita in cash, the balance of the funds in the treasury arising from the proceeds of sale of Sioux Indian lands in Minnesota and Dakota, the use of which is controlled by section four of the Act of March third, eighteen hundred and sixty-three, said sum being ten thousand and fifty-five dollars and forty-nine cents.

§ 937. Authorizing the transfer of surplus property from one Indian reservation to another.—[22]. That section six of the Indian Appropriation Act of July first, eighteen hundred and ninety-eight, be, and it is hereby, amended so as to read as follows:

“Sec. 6. That whenever there is on hand at any of the Indian reservations government property not required for the use and benefit of the Indians on such reservations, the Secretary of the Interior is authorized to cause any such property to be transferred to any other Indian reservation where it may be used advantageously, or to cause it to be sold and the proceeds thereof deposited and covered into the treasury in conformity with section thirty-six hundred and eighteen of the Revised Statutes of the United States.”

§ 938. Regulating purchase of Indian supplies.—[23]. That hereafter the purchase of Indian supplies shall be made in conformity with the requirements of section thirty-seven hundred and nine of the Revised Statutes of the United States: Provided, that so far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior. All acts and parts of acts in conflict with the provisions of this section are hereby repealed.

§ 939. Grant of lands to Minneapolis, Red Lake & Manitoba Railway Company, Red Lake Indian Reservation, Minnesota, amended.—[24]. That the Act entitled “An act to allow the Minneapolis, Red Lake and Manitoba Railway Company to acquire certain lands in the Red Lake Indian Reservation, Minnesota,” approved February eighth, nineteen hundred and five, be, and the same is hereby, amended by adding at the end thereof a section reading as follows:

“Sec. 7. After said company shall have filed maps of definite location and the same shall have been approved

by the Secretary of the Interior, as provided in section three, and compensation shall have been made to the tribes of Indians and occupants, as provided in section two, the Secretary of the Interior shall cause a patent for the land selected and taken to be issued to said company, the same to be in proper form to show the title vested in the company to the land selected by the terms of the grant in this act contained."

§ 940. Allotments out of Kiowa, Comanche and Apache Reservation to be made to enrolled members born since June 5, 1906.—[25]. That section twenty-four of the Act of May twenty-ninth, nineteen hundred and eight (Thirty-Fifth Statutes at Large, page four hundred and forty-four), be amended to read as follows:

"Sec. 24. That the Secretary of the Interior shall cause an allotment of one hundred and sixty acres to be made under the provisions of the Act of June fifth, nineteen hundred and six, to each child of Indian parentage born since that date who has not heretofore received an allotment, and whose father or mother was a duly enrolled member of either the Kiowa, Comanche, or Apache Tribe of Indians in Oklahoma and entitled to allotment under the provisions of the Act of June sixth, nineteen hundred; said allotments to be made from the tracts of land remaining unsold in the 'pasture reserves' in the former Kiowa, Comanche, and Apache Reservation: Provided, that if there is not sufficient land remaining unsold in said tracts to give an allotment of one hundred and sixty acres to each child entitled, said allotment shall be made in such areas as the existing acreage will permit, each child entitled to be given his proportionate share, as nearly as practicable."

§ 941. Conveyance by guardians of Bunnie McIntosh and Mildred McIntosh ratified and confirmed.—[26]. That all sales and conveyances made by Bunnie McIntosh, legal guardian of Mildred McIntosh, a minor, mixed-blood Creek Indian, under decree of the United States court of the West-

ern district of the Indian Territory, sitting at Wewoka, rendered on the ninth day of July, nineteen hundred and seven, and sold on the twenty-seventh and twenty-eighth days of September, nineteen hundred and seven, and conveying various portions of the north half of the southeast quarter of section thirteen, township eleven north, range nine east of said lands, adjoining the town of Okemah, be, and the same are hereby, validated, and all restrictions upon said lands heretofore placed by act of Congress are removed.

§ 942. Sales of timber on pine lands in Chippewa Indian Reservation, Minnesota.—[27]. That where the Secretary of the Interior has offered for sale the pine timber on lands classified as "pine lands" in the ceded Chippewa Indian reservations in the state of Minnesota, either under the provisions of section five of the Act of Congress approved January fourteenth, eighteen hundred and eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the state of Minnesota" (Twenty-Fifth Statutes at Large, page six hundred and forty-two), or under the provisions of the Act of Congress amendatory thereof approved June twenty-seventh, nineteen hundred and two, entitled "An act to amend an act entitled 'An act for the relief and civilization of the Chippewa Indians in the state of Minnesota,' approved January fourteenth, eighteen hundred and eighty-nine" (Thirty-Second Statutes at Large, page four hundred), or shall hereafter offer for sale the timber on any such "pine lands" under the act last described, and the same remains unsold, he shall be authorized to sell the timber unsold at any such offering, after inserting notice of the proposed offering once each week for four consecutive weeks in not less than six newspapers or trade journals of general circulation, the first publication of said notice to be at least three calendar months prior to the sale: Provided, that this provision shall supersede any other provision of law with reference to the advertising of Chippewa

Indian pine-timber lands for sale: Provided also, that printed copies of the rules and regulations and a schedule of the lands and timber shall be furnished applicants therefor at least thirty days prior to the sale: And provided further, that except as herein modified the sale shall be conducted in accordance with the provisions of the said Act of June twenty-seventh, nineteen hundred and two. That should there be unsold pine timber on lands classified as "pine lands" after a reoffering under this act, the Secretary of the Interior is hereby authorized, if he deems it advisable, to open the lands on which such timber is located to homestead settlement, in accordance with the provisions of section six of said Act of January fourteenth, eighteen hundred and eighty-nine, with the condition that the settler shall, at the time of making his original homestead entry, pay for the timber at a rate per thousand feet to be fixed by the Secretary of the Interior, which shall not be less than the minimum price provided by existing law, such payment to be in addition to the price required by law to be paid for the land, the amount of timber to be determined in accordance with existing government estimates, or to be re-estimated, if deemed advisable by the Secretary of the Interior, in such manner as he may prescribe and by such agents as he may designate under the authority of the said Act of June twenty-seventh, nineteen hundred and two: Provided, however, that nothing herein shall be held to authorize the opening to settlement or entry of any land included in the National Forest created by the Act approved May twenty-third, nineteen hundred and eight, entitled "An act amending the Act of January fourteenth, eighteen hundred and eighty-nine, and acts amendatory thereof, and for other purposes."

§ 943. Secretary authorized to withdraw from entry certain lands in Minnesota for Indian village sites.—[28]. That the Secretary of the Interior be, and he hereby is, authorized and directed to withdraw from entry and settle-

ment the northeast quarter and the northeast quarter of the northwest quarter and lots numbered one and two, in section sixteen, township one hundred and forty-seven north, range twenty-six west, in the state of Minnesota, and to reserve said land as a permanent village site for the Winnibigoshish band of Chippewa Indians of Minnesota.

§ 944. Classification of lands in Flathead Reservation and sale of certain classes.—[29]. That the Secretary of the Interior be, and he is hereby, authorized to classify and appraise, under such rules and regulations as he may prescribe, all of the vacant, unallotted, and unreserved lands of the Flathead Indian Reservation, in the state of Montana, which have not been classified and appraised as provided for by the Act of Congress approved April twenty-third, nineteen hundred and four, entitled "An act for the survey and allotment of lands now embraced within the limits of the Flathead Reservation, in the state of Montana, and the sale and disposal of all surplus lands after allotment," and the classification and appraisal made hereunder shall be of the same effect as provided for in said act; and the said Secretary is hereby authorized to dispose of all lands classified as "barren," "burned over," and "containing small timber," under such rules and regulations as he may prescribe, at not less than their appraised value.

§ 945. Act authorizing allotment on Colville Indian Reservation amended.—[30]. That section two of the Act of March twenty-second, nineteen hundred and six, authorizing allotments on the Colville Indian Reservation, be, and the same hereby is, amended so as to authorize allotments to be made to Indians on the diminished Colville Reservation, in the state of Washington, entitled to allotments under existing laws in conformity with the general allotment laws as amended by section seventeen of this act.

§ 946. Allotments to Indians in national forest reservations allowed.—[31]. That the Secretary of the Interior is hereby authorized, in his discretion, to make allotments

within the national forests in conformity with the general allotment laws as amended by section ——— of this act, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture, who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided.

§ 947. Deed to deceased grantor operates to vest title in heirs, devisees or assigns.—[32]. Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or act of Congress, to a person who had died, or who hereafter dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life.

§ 948. Only section 32 of this act to apply to Osages and Five Civilized Tribes.—[33]. That the provisions of this act shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma, except as provided in section thirty-two.

§ 948a. Act of February 14, 1913,² amending section 2 of the Act of June 25, 1910.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section two of an Act en-

² 37 Stat. 678, c. 55.

titled "An act to provide for determining the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians, for the leasing of allotments, and for other purposes," approved June twenty-fifth, nineteen hundred and ten, be amended to read as follows:

"Sec. 2. That any persons of the age of twenty-one years having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee-simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: Provided, however, that no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: Provided further, that the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is hereby authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the state wherein the property is located: Provided further, that the approval of the will and the death of the testator, shall not operate to terminate the trust or restrictive period, but the Secretary of the Interior may, in his discretion, cause the lands to be sold and the money derived therefrom, or so much thereof as may be necessary, used for the benefit of the heir or heirs entitled thereto, remove the restrictions, or cause patent in fee to be issued to the devisee or devisees, and pay the moneys to the legatee

or legatees either in whole or in part from time to time as he may deem advisable, or use it for their benefit:

§ 948b. Act not applicable to Five Civilized Tribes and Osages.—“Provided also, that sections one and two of this act shall not apply to the Five Civilized Tribes or the Osage Indians.”

CHAPTER 62

SUITS AFFECTING ALLOTMENTS

§ 949. Suits to establish rights to allotments authorized.

950. An act to amend and re-enact paragraph twenty-four of section twenty-four of chapter two of an Act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

951. United States attorneys may represent Indians in suits for possession of lands.

§ 949. Suits to establish rights to allotments authorized.—That all persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper Circuit Court of the United States; and said Circuit Courts are hereby given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him,

but this provision shall not apply to any lands now held by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: Provided, that the right of appeal shall be allowed to either party as in other cases.¹

That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the government in the premises: Provided, that should the district attorney neglect or refuse

¹ *Sloan v. United States*, 193 U. S. 614, 24 Sup. Ct. 570, 48 L. Ed. 814; *Hy-yu-tse-mil-kin v. Smith*, 194 U. S. 401, 24 Sup. Ct. 676, 48 L. Ed. 1039; *McKay v. Kalyton*, 204 U. S. 458, 27 Sup. Ct. 346, 51 L. Ed. 566; *Conley v. Ballinger*, 216 U. S. 84, 30 Sup. Ct. 224, 54 L. Ed. 393; *Hickman v. United States*, 224 U. S. 413, 32 Sup. Ct. 424, 56 L. Ed. 820; *Sloan v. United States (C. C.)* 118 Fed. 283; *Parr v. United States (C. C.)* 132 Fed. 1004; *United States v. Heyfron (C. C.)* 138 Fed. 964; *Smith v. United States (C. C.)* 142 Fed. 225; *Waldron v. United States (C. C.)* 143 Fed. 413; *Woodbury v. United States*, 170 Fed. 302, 95 C. C. A. 498; *Reynolds v. United States*, 174 Fed. 212, 98 C. C. A. 220; *Oakes v. United States (C. C.)* 172 Fed. 305; *Young v. United States (C. C.)* 176 Fed. 612; *Bond v. United States (C. C.)* 181 Fed. 613; *La Clair v. United States (C. C.)* 184 Fed. 128; *Pel-ata-yakot v. United States (C. C.)* 188 Fed. 387; *Leecy v. United States*, 190 Fed. 289, 111 C. C. A. 254; *Sully v. United States (C. C.)* 195 Fed. 113; *Drapeau v. United States (C. C.)* 195 Fed. 130; *United States v. Mani (D. C.)* 196 Fed. 160.

to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

Approved February 6, 1901.²

§ 950. An act to amend and re-enact paragraph twenty-four of section twenty-four of chapter two of an Act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that paragraph twenty-four of section twenty-four of chapter two of an Act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby amended so as to read as follows:

"Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

"And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands now or heretofore held by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency: Provided, that the right of appeal shall be allowed to either party as in other cases."

Approved December 21, 1911.³

² 31 Stat. 760, c. 217.

³ 37 Stat. 46, c. 5.

§ 951. United States attorneys may represent Indians in suits for possession of lands.—In all states and territories where there are reservations or allotted Indians, the United States district attorney shall represent them in all suits at law and in equity.⁴

⁴ Act March 3, 1893, c. 209, 27 Stat. 631.

CHAPTER 63

ALLOTMENT AGREEMENT WITH THE ABSENTEE SHAWNEE INDIANS, APPROVED MARCH 3, 1891, AND SUBSEQUENT LEGISLATION

(CHAPTER 543, 26 STAT. 989-1019 AND AMENDMENTS THEREOF. RE-CITALS AS TO PARTIES AND SIGNATURES OMITTED)

- § 952. Lands ceded.
- 953. Confirmation of previous allotments.
- 954. Title to be held under terms of General Allotment Act.
- 955. School sections, etc.
- 956. Time limit for taking allotments.
- 957. Number of allottees.
- 958. Payment to Indians for homes, etc.
- 959. Agreement effective when ratified.
- 960. Removal of restrictions on alienation—Act of August 15, 1894, applicable to Citizen Pottawatomie and Absentee Shawnee.
- 961. Removal of restrictions on alienation—Act of May 31, 1900, applicable to Citizen Pottawatomie and Absentee Shawnee.

§ 952. Lands ceded.—[Art. I]. The Absentee Shawnee Indians of the Indian Territory in consideration of the fulfillment of the promises hereinafter made, hereby cede, relinquish and surrender, forever and absolutely, to the United States, all their claim, title and interest of every kind and character in and to the following described tract of country in the Indian Territory, according to Morrill's survey, under contract of September third, eighteen hundred and seventy-two—to wit:

“Beginning at a point on the right bank of the north fork of the Canadian river, in section twenty-one, of township eleven north, range five east, where the western boundary line of the Seminole Reservation strikes said river; thence south with said boundary line to the left bank of the Canadian river; thence up said river, along the left bank thereof, to a point on said left bank in the northeast quarter of section thirty-six, township six north, range one west, thirty-nine chains and eighty-two links (by the meanders of the river west) from the point where the Indian meridian

intersects said river, or thirty-eight chains and fifty-two links due west from said Indian meridian; thence north as run by O. T. Morrill, under his contract of September third, eighteen hundred and seventy-two, to a point on the right bank of the north fork of the Canadian river; thence down said river, along the right bank thereof, to place of beginning, comprising the following, viz.:

"Fractional township five north, ranges one, two, three, four, and five east, north of Canadian river. Fractional township six north, ranges one, three, four, and five east, north of the Canadian river. Township six north, range two east.

"Townships seven, eight, and nine, ranges one, two, three, and four east. Fractional townships seven, eight, and nine north, range five east.

"Townships ten and eleven north, range one east. Fractional township ten north, ranges two, three and four east, south of the north fork of the Canadian river. Fractional township ten north, range five east. Fractional township eleven north, ranges two, three, four, and five east, south of the north fork of the Canadian river. Fractional township twelve north, ranges one and two east, south of the north fork of the Canadian river.

"Also that portion of sections one, twelve, thirteen, twenty-four, and twenty-five, and section thirty-six, north of the Canadian river in township six north, range one west, lying east of the western boundary line of the said Pottawatomie Reservation as shown by the Morrill survey, and that portion of sections one, twelve, thirteen, twenty-four, twenty-five, and thirty-six, in townships seven, eight, nine, ten, and eleven north, range one west, lying east of the western boundary line aforesaid, and that portion of sections one and twelve south of the north fork of the Canadian river, and sections thirteen, twenty-four, twenty-five, and thirty-six in township twelve north, range one west, lying east of the western boundary line aforesaid contain-

ing an area of five hundred and seventy-five thousand eight hundred and seventy and forty-two one-hundredths acres of land."

§ 953. Confirmation of previous allotments.—[Art. II]. Whereas certain allotments of land have been heretofore made, and are now being made to said Absentee Shawnees according to instructions from the Department of the Interior, at Washington, under Act of Congress entitled, "An act to provide for the allotment of lands, in severalty, to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians and for other purposes," approved February 8, 1887, and according to said instructions other allotments are to be made, it is further agreed that all such allotments so made shall be confirmed—all in process of being made shall be completed and confirmed, and all to be made shall be made under the same rules and regulations, as to persons, locations and area, as those heretofore made, and when made shall be confirmed.

§ 954. Title to be held under terms of General Allotment Act.—When said allotments shall be so confirmed and approved by the Secretary of the Interior, the title in each allottee shall be evidenced and protected in every particular, in the same manner and to the extent provided for in the above-mentioned act of Congress.

§ 955. School sections, etc.—Provided, that in all allotments to be hereafter made, no person shall have the right to select his or her allotment in sections sixteen (16) and thirty-six (36) in any Congressional township—nor upon any land heretofore set apart in said tract of country for any use by the United States, or for school, school farm or religious purposes—nor shall said sections sixteen (16) and thirty-six (36) be subject to homestead entry, but shall be kept and used for school purposes; nor shall any lands set apart for any use of the United States, or for school, school farm or religious purposes, be subject to homestead

entry—but shall be held by the United States for such purposes, so long as the United States shall see fit to so use them;

§ 956. **Limit for taking allotments.**—And provided further, that all such allotments shall be taken on or before January 1, 1891, after which time and up to February 8, 1891, the allotting agent then on said reservation shall make allotments to those Absentee Shawnees resident in said tract of country, who have failed or refused to take their allotments as aforesaid, and such allotments so made by such allotting agent shall have the same force and effect as if the selections were made by the Indians in person. After said date of February 8, 1891, any right to allotment hereunder or by act of Congress, shall be deemed waived and forever cease to exist.

§ 957. **Number of allottees.**—[Art. III]. It is further agreed that the number who are entitled to take allotments and who shall take allotments, including those who have already taken allotments, is six hundred and fifty (650). But if it shall be ascertained that a greater number than six hundred and fifty (650) shall be entitled to and shall take allotments hereunder, then there shall be deducted from the sum hereinafter agreed to be paid to said Absentee Shawnees, the sum of one (\$1) dollar for each acre of land allotted to those in excess of said number.

§ 958. **Payment to Indians for homes, etc.**—[Art. IV]. It is further agreed, as a further and only additional consideration for such relinquishment of all title, claim and interest of every kind and character, in and to said lands, that the United States will pay to said Absentee Shawnees in said tract of country, as soon as may be after this agreement shall have been ratified by Congress, and under the direction of the Commissioner of Indian Affairs, the sum of sixty-five thousand (\$65,000.00) dollars for making homes and other improvements on their said allotments. All payments of money herein provided for shall be made per cap-

ita to said Absentee Shawnees according to the list of all those to whom allotments shall be hereunder made, and the wives of allottees.

§ 959. Agreement effective when ratified.—[Art. V]. This agreement shall have effect after it shall have been ratified by the Congress of the United States.

§ 960. Removal of restrictions on alienation—Act of August 15, 1894, applicable to Citizen Pottawatomie and Absentee Shawnee.—That any member of the Citizen Band of Pottawatomie Indians and of the Absentee Shawnee Indians of Oklahoma, to whom a trust patent has been issued under the provisions of the Act approved February eighth, eighteen hundred and eighty-seven (Twenty-Four Statutes, three hundred and eighty-eight) and being over twenty-one years of age, may sell and convey any portion of the land covered by such patent in excess of eighty acres, the deed of conveyance to be subject to approval by the Secretary of the Interior under such rules and regulations as he may prescribe, and that any Citizen Pottawatomie not residing upon his allotment, but being a legal resident of another state or territory, may in like manner sell and convey all the land covered by said patent, and that upon the approval of such deed by the Secretary of the Interior the title to the land thereby conveyed shall vest in the grantee therein named. And the land sold and conveyed under the provisions of this act shall, upon proper recording of the deeds therefor, be subject to taxation as other lands in said territory, but neither the lands covered by such patents not sold and conveyed under the provisions of this act, nor any improvements made thereon, shall be subject to taxation in any manner by the territorial or local authorities during the period in which said lands shall be held in trust by the United States.¹

¹ From Act Aug. 15, 1894, c. 290, 28 Stat. 295.

§ 961. **Removal of restrictions on alienation—Act of May 31, 1900, applicable to Citizen Pottawatomie and Absentee Shawnee.**—That the proviso to the Act approved August fifteenth, eighteen hundred and ninety-four, permitting the sale of allotted lands by members of the Citizen Band of Pottawatomie Indians and of the Absentee Shawnee Indians of Oklahoma is hereby extended so as to permit the adult heirs of a deceased allottee to sell and convey the lands inherited from such decedent; and if there be both adult and minor owners of such inherited lands, then such minors may join in a sale thereof by a guardian, duly appointed by the proper court, upon an order of such court made upon petition filed by such guardian, all conveyances made under this provision to be subject to the approval of the Secretary of the Interior; and any Citizen Pottawatomie or Absentee Shawnee not residing upon his allotment, but being an actual resident of another state or territory, may in like manner sell and convey all the land allotted to him.²

² From Act May 31, 1900, c. 598, 31 Stat. 221, 247.

CHAPTER 64

ALLOTMENT AGREEMENT BETWEEN THE UNITED STATES AND CHEYENNE AND ARAPAHOE INDIANS, MADE ON THE —— DAY OF OCTOBER, 1890, AND APPROVED AND RATI- FIED BY CONGRESS ON THE 3d DAY OF MARCH, 1891

(CHAPTER 543, 26 STAT. 989-1022. RECITALS AS TO SIGNATURES AND
PARTIES OMITTED)

- § 962. Cession of lands to United States.
- 963. Cession subject to right of allotment.
- 964. Description of ceded lands.
- 965. Selection of allotments out of ceded lands.
- 966. Classification of lands.
- 967. Preference rights in making selections.
- 968. Reservations for school and other purposes.
- 969. Time for selection of allotment.
- 970. Title of allottees to be held by United States in trust under
General Allotment Act and amendments.
- 971. Payment for ceded lands.
- 972. Allotments previously made confirmed.
- 973. Agreement effective when ratified.
- 973a. Authorizing sale of certain reserved lands.

§ 962. Cession of lands to United States.—[Art. I].
The said Cheyenne and Arapahoe Tribes of Indians hereby
cede, convey, transfer, relinquish, and surrender forever
and absolutely, without any reservation whatever, express
or implied, all their claim, title, and interest of every kind
and character, in and to the lands embraced in the follow-
ing described tract of country in the Indian Territory, to-
wit: A tract of country west of the ninety-sixth degree of
west longitude, bounded by the Arkansas river on the east,
the thirty-seventh parallel of north latitude (being the
southern boundary line of the state of Kansas) on the north,
and the Cimarron or Red fork of the Arkansas river on the
west and south.

§ 963. Cession subject to right of allotment.—[Art. II].
Subject to the allotment of land in severalty to the individ-
ual members of the Cheyenne and Arapahoe Tribes of In-
dians, as hereinafter provided for and subject to the condi-

tions hereinafter imposed, for the considerations hereinafter mentioned the said Cheyenne and Arapahoe Indians hereby cede, convey, transfer, relinquish, and surrender forever and absolutely, without any reservation whatever, express or implied, all their claim, title and interest, of every kind and character, in and to the lands embraced in the following described tract of country in the Indian Territory, to-wit:

§ 964. **Description of ceded lands.**—Commencing at a point where the Washita river crosses the ninety-eighth degree of west longitude, as surveyed in the years eighteen hundred and fifty-eight and eighteen hundred and seventy-one; thence north on a line with said ninety-eighth degree to the point where it is crossed by the Red fork of the Arkansas (sometimes called the Cimarron river); thence up said river, in the middle of the main channel thereof, to the north boundary of the country ceded to the United States by the treaty of June fourteenth, eighteen hundred and sixty-six, with the Creek Nation of Indians; thence west on said north boundary and the north boundary of the country ceded to the United States by the treaty of March twenty-first, eighteen hundred and sixty-six, with the Seminole Indians, to the one-hundredth degree of west longitude; thence south on the line of said one-hundredth degree to the point where it strikes the North fork of the Red river; thence down said North fork of the Red river to a point where it strikes the north line of the Kiowa and Comanche Reservation; thence east along said boundary to a point where it strikes the Washita river; thence down said Washita river, in the middle of the main channel thereof, to the place of beginning; and all other lands or tracts of country in the Indian Territory to which they have or may set up or allege any right, title, interest or claim whatsoever.

§ 965. **Selection of allotments out of ceded lands.**—[Art. III]. Out of the lands ceded, conveyed, transferred, relinquished, and surrendered by article II hereof, and in part

consideration for the cession of lands named in the preceding article, it is agreed by the United States that each member of the said Cheyenne and Arapahoe Tribes of Indians over the age of eighteen years shall have the right to select for himself or herself one hundred and sixty acres of land, to be held and owned in severalty, to conform to legal surveys in boundary; and that the father, or, if he be dead, the mother, if members of either of said tribes of Indians, shall have a right to select a like amount of land for each of his or her children under the age of eighteen years; and that the Commissioner of Indian Affairs, or some one by him appointed for the purpose, shall select a like amount of land for each orphan child belonging to either of said tribes under the age of eighteen years.

§ 966. **Classification of lands.**—[Art. IV]. It is further agreed that the land in said reservation shall be classed as bottom land and grazing land; and, in making selection of lands to be allotted in severalty as aforesaid, each and every Indian herein provided for shall be required to take at least one-half in area, of his or her allotments, of grazing land. It is hereby further expressly agreed that no person shall have the right to make his or her selection of land in any part of said reservation that is now used or occupied for military, agency, school, school farm, religious, or other public uses, or in sections sixteen and thirty-six in each congressional township, except in cases where any Cheyenne or Arapahoe Indian has heretofore made improvements upon and now uses and occupies a part of said sections sixteen and thirty-six such Indian may make his or her selection within the boundaries so prescribed so as to include his or her improvements, or in that part thereof now occupied and claimed by the Wichita and affiliated bands of Indians described as follows, viz.: Commencing at a point in the middle of the main channel of the Washita river, where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of the said river

to the line of ninety-eight degrees forty minutes west longitude, thence up said line of ninety-eight degrees forty minutes due north to the middle of the main channel of the main Canadian river, thence down the middle of the main Canadian river to where it crosses the ninety-eighth meridian; thence due south to the place of beginning.

§ 967. **Preference rights in making selections.**—It is further agreed that wherever in said reservation any Indian, entitled to take lands in severalty hereunder, has made improvements and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection within the area above provided for allotments so as to include his or her said improvements.

§ 968. **Reservations for school and other purposes.**—It is further agreed that sections sixteen and thirty-six in each Congressional township in said reservation shall not become subject to homestead entry, but shall be held by the United States and finally sold for public school purposes. It is hereby further agreed that wherever in said reservation any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians the land so occupied may be allotted and confirmed to such society or organization; not, however, to exceed one hundred and sixty acres of land to any one society or organization so long as the same shall be so occupied and used, and such land shall not be subject to homestead entry.

§ 969. **Time for selection of allotment.**—[Art. V]. All allotments hereunder shall be selected within ninety days from the ratification of this agreement by the Congress of the United States, provided the Secretary of the Interior, in his discretion, may extend the time for making such selection, and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in

that time, then the allotting agent in charge of the work of making such allotments shall, within the next thirty days after said time, make allotments to such Indians, which shall have the same force and effect as if the selection were made by the Indian.

§ 970. Title of allottees to be held by United States in trust under General Allotment Act and amendments.—[Art. VI]. When said allotments of land shall have been selected and taken as aforesaid, and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for the period of twenty-five years, in the manner and to the extent provided for in the Act of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven; and at the expiration of said period of twenty-five years the titles thereto shall be conveyed in fee simple to the allottees, or their heirs, free from all incumbrances.

§ 971. Payment for ceded lands.—[Art. VII]. As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to lands as aforesaid the United States agrees to pay to the Cheyenne and Arapahoe Tribes of Indians one million and five hundred thousand dollars as follows: Two hundred and fifty thousand dollars in cash, to be distributed per capita among the members of said tribes within sixty days after this agreement shall be ratified by the Congress of the United States; two hundred and fifty thousand to be paid out for said Indians under the direction of the Secretary of the Interior, and the remaining one million dollars to be retained in the Treasury of the United States placed to the credit of the said Indians, and, while so retained, to draw five per centum interest per annum, to be paid to said Indians per capita annually.

Nothing herein contained shall be held to affect in any way any annuities due said Indians under existing laws, agreements, or treaties.

§ 972. Allotments previously made confirmed.—[Art. VIII]. It is further agreed that wherever in said reservation any member of either of said tribes has in pursuance of any laws or under any rules or regulations of the Interior Department, taken an allotment, such an allotment, at the option of the allottee, shall be confirmed and governed by all the conditions attached to allotments taken under this agreement.

§ 973. Agreement effective when ratified.—[Art. IX]. This agreement shall have effect whenever it shall be ratified by the Congress of the United States.

(From Act March 3, 1891, c. 543, 26 Stat. 1022.)

§ 973a. Authorizing sale of certain reserved lands.—[12]. That the Secretary of the Interior be, and he hereby is, authorized to cause that part of the Cheyenne school reserve and the Cheyenne and Arapahoe Agency reserve lying east of a public road and separated from the school and agency reserves by such road, being a narrow strip of land more particularly described as lots eight and nine of section four, lots five and six of section nine, lots five and six of section sixteen, and lots five and six of section twenty-one, all in township thirteen north, range seven west, Indian meridian, in the state of Oklahoma, to be appraised by legal subdivisions and sold for the benefit of the Indians of the Cheyenne and Arapahoe Reservations; and the owners of the adjoining lands are hereby given the preference right for ninety days from and after the passage of this act to purchase said lands at not less than the appraised value which may be placed thereon by the Secretary of the Interior, the purchase price to be paid in cash at the time of notice of acceptance by said purchasers. And in case said lands, or any part thereof, remain unsold after the expiration of said ninety days, the said Secretary shall proceed to

offer said lands for sale under such regulations as he may prescribe. The funds received from said sales to be deposited in the treasury of the United States to the credit of the Indians of the Cheyenne and Arapahoe Reservation, Oklahoma. That the Secretary of the Interior be, and he hereby is, authorized to cause to be appraised and sold six hundred and forty acres of land, together with the buildings and other appurtenances thereto belonging, heretofore set aside as reservation for the Cheyenne and Arapahoe Agency and the Arapahoe Indian school in Oklahoma, and that for sixty days from and after said appraisement the city of El Reno, in Oklahoma, be given the preference right to purchase said land and improvements thereon at the appraised value thereof, to be used for school purposes, the purchase price thereof to be paid in cash at the time of the acceptance by said purchaser. And in case said land remains unsold after the expiration of said sixty days, the Secretary shall proceed to offer said land for sale under such regulations as he may prescribe, and he is authorized to use all or any part of the proceeds of the sale thereof in the erection of new buildings and in repairs and improvements at the present Cheyenne Boarding School in the Cheyenne and Arapahoe Agency, in Oklahoma, and in the establishment of such day schools as may be required for said Cheyenne and Arapahoe Indians in Oklahoma, and that the balance of said proceeds, if any there be, may be used in support of said Cheyenne Boarding School or said day school.¹

¹ This section is from Act May 29, 1908, c. 216, 35 Stat. 444.

CHAPTER 65

ALLOTMENT AGREEMENT WITH THE IOWA TRIBE OF INDIANS, APPROVED FEBRUARY 13, 1891

(CHAPTER 165, 26 STAT. 753, 1 KAPP. 393. RECITALS AS TO PARTIES AND SIGNATURES OMITTED)

- § 974. Relinquishment, etc., to the United States of lands in Indian Territory by the Iowa Tribe of Indians.
975. Land to be allotted in severalty.
976. Procedure in allotment.
977. Trust patents to issue to allottees.
978. Restrictions upon alienation and incumbrance.
979. Allotments nontaxable and not subject to forced sale—Descent.
980. Church, schoolhouse, and graveyard lands, excepted from allotment, etc.
981. Expenditure for houses, animals, seeds, etc., after allotment.
982. Additional consideration to Iowa Indians.
983. All other existing rights, etc., of Iowa reserved.
984. Chief William Tohee and Maggie, his wife.
985. Operation.

SUPPLEMENTAL ARTICLES

986. The President may extend the trust period for allotments of Iowa.
987. An additional ten acre square may be held in common, etc.
988. Descent.

§ 974. Relinquishment, etc., to the United States of lands in Indian Territory by the Iowa Tribe of Indians.—[Art. I]. The said Iowa Tribe of Indians, residing and having their homes thereon, upon the conditions hereinafter expressed, do hereby surrender and relinquish to the United States all their right, title, claim and interest in and to and over the following described tract of country in the Indian Territory, namely:

Beginning at the point where the Deep fork of the Canadian river intersects the west boundary of the Sac and Fox Reservation; thence north along said west boundary to the south bank of the Cimarron river; thence up said Cimarron river to the Indian meridian; thence south along

said Indian meridian to the Deep fork of the Canadian river; thence down said Deep fork to the place of beginning," set apart for the permanent use and occupation of the Iowa and such other Indians as the Secretary of the Interior may see fit to locate thereon, by executive order made and dated the fifteenth day of August, in the year of our Lord eighteen hundred and eighty-three.

§ 975. Land to be allotted in severalty.—[Art. II]. Each and every member of said Iowa Tribe of Indians shall be entitled to select and locate upon said reservation or tract of country eighty acres of land which shall be allotted to such Indians in severalty. No other restriction as to locality shall be placed upon such selections than that they shall be so located as to conform to the congressional survey or subdivision of said tract of country, and any Indian having improvements may have the preference over any other Indian in and to the tract of land containing such improvements so far as they are within a legal subdivision not exceeding in area the quantity of land that he is entitled to select and locate.

Each member of said tribe of Indians over the age of eighteen years, shall select his or her land, and the father, or if he be dead the mother, shall select the land herein provided for, for each of his or her children who may be under the age of eighteen years, and if both father and mother of a child under eighteen years of age shall be dead, then the nearest of kin, over eighteen years of age and an Iowa Indian, shall select and locate his or her land—or if such person shall be without kindred as aforesaid, then the Commissioner of Indian Affairs, or some one by him authorized, shall select and locate the land of such child.

§ 976. Procedure in allotment.—[Art. III]. That the allotments provided for in this act shall be made at the cost of the United States by special agents appointed by the President for such purpose, under such rules and regulations as the Secretary of the Interior may from time to time

prescribe, and within sixty days after such special agent or agents shall appear upon said reservation and give notice to the acting and recognized chief of said Iowa Tribe of Indians, that he is ready to make such allotments; and if any one entitled to an allotment hereunder shall fail to make his or her selection within said period of sixty days, then such special agent shall proceed at once to make such selection for such person or persons—which shall have the same effect as if made by the person so entitled; and when all of said allotments are made and approved, then the residue of said reservation, except as hereinafter stated, shall, as far as said Iowa Indians are concerned, become public land of the United States.

§ 977. **Trust patents to issue to allottees.—[Art. IV].** Upon the approval of the allotments provided for herein by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his or her decease, of his or her heirs or devisees according to the laws of the state or territory where such land is located, and that at the expiration of said period, the United States will convey the same by patent to said Indian or his heirs or devisees as aforesaid in fee, discharged of said trust and free of all incumbrance whatsoever.

§ 978. **Restrictions upon alienation and incumbrance.—**And if any conveyance shall be made of the lands set apart and allotted, as herein provided, or any contract made touching the same, before the expiration of the time above mentioned such conveyance or contract shall be absolutely null and void.

§ 979. **Allotments nontaxable and not subject to forced sale—Descent.—**And during said period of twenty-five

years said lands so allotted and the improvements thereon shall not be subject to taxation for any purpose by any state or territory or any municipal subdivision thereof nor subject to be seized upon any execution or other mesne or final process issued out of any court of any state or territory, and shall never be subject to be seized or sold upon any execution or other mesne or final process issued out of any court of any state or territory upon any judgment rendered upon any debt or liability incurred, the consideration of which, immediate or remote passed prior to the expiration of said period of twenty-five years. And the law of descent and partition in force in the state or territory where such lands are situated shall apply thereto.

§ 980. Church, schoolhouse, and graveyard lands excepted from allotment, etc.—[Art. V]. There shall be excepted from the operation of this agreement a tract of land, not exceeding ten acres in a square form, including the church and schoolhouse and graveyard at or near the Iowa village, and ten acres of land shall belong to said Iowa Tribe of Indians in common so long as they shall use the same for religious, educational, and burial purposes for their said tribe—but whenever they shall cease to use the same for such purposes for their tribe, said tract of land shall belong to the United States.

§ 981. Expenditure for houses, animals, seeds, etc., after allotment.—[Art. VI]. When all the allotments are made as aforesaid, the United States, under the direction of the Commissioner of Indian Affairs will expend for said Iowa Tribe of Indians described herein as beneficiaries of this agreement for improving their said land, for building houses, providing for said Indians breeding animals, agriculture implements, and seeds, the sum of twenty-four thousand dollars—provided, that said sum shall be paid out as nearly equally per capita as may be, the father, or, if he be dead, the mother, to act for their children under the age of eighteen years—and the Commissioner of In-

dian Affairs in his own discretion to act for orphan children under the age of eighteen years.

§ 982. **Additional consideration to Iowa Indians.**—[Art. VII]. As a further and only additional consideration for such surrender and relinquishment of title, claim, right and interest, as aforesaid, the United States will pay to said Iowa Indians, the beneficiaries of this agreement, per capita, three thousand and six hundred dollars per annum, payable semi-annually, for the first five years after this agreement shall take effect; three thousand dollars per annum payable semi-annually, for the second five years after this agreement shall take effect; two thousand and four hundred dollars per annum, payable semi-annually for the third five years after this agreement shall take effect; one thousand eight hundred dollars per annum payable semi-annually, for the fourth five years after this agreement shall take effect, and one thousand two hundred dollars per annum, payable semi-annually, for the fifth five years after the agreement shall take effect. In all such payments each person over the age of eighteen years shall receive and receipt for his or her share, and the father, or, if he be dead, the mother, of any person entitled, who is under the age of eighteen years, shall receive and receipt for his or her share; and when both father and mother of such person be dead, the person, if an Iowa Indian, with whom such person makes his home, shall receive and receipt for such person's shares; otherwise, it shall be paid to the Indian agent of the said Iowa Indians for the use of such orphan.

§ 983. **All other existing rights, etc., of Iowa, reserved.**—[Art. VIII]. It is hereby expressly agreed and understood that nothing herein contained shall in any manner affect any other claim not mentioned herein that said Iowa Tribe of Indians have against the United States; nor shall this agreement in any manner affect any interest that said tribe or its members may have in any reservation of land outside of the Indian Territory, nor shall this agreement in

any manner affect any annuities or payments, principal or interest due, to said tribe or its members by existing laws or treaties with the United States.

§ 984. **Chief William Tohee and Maggie, his wife.**—[Art. IX]. William Tohee, the chief of the Iowas, is incurably blind and helpless, and has a wife, Maggie Tohee, an Iowa woman, but by whom William has no child. William is not only helpless, but requires and receives the constant care and attention of Maggie, so that neither can give attention to matters of business or labor, or devote their time or energy to procuring a living. Therefore it is mutually agreed in addition to the provisions hereinbefore made for the Iowas, including said William and Maggie, that the United States will pay out to or for the use of said William, under the direction of the Commissioner of Indian Affairs, the sum of three hundred and fifty dollars. Because of the relation between the said William and Maggie and the care that he requires of her, and that she bestows upon him, it is agreed that the patents to them creating the trust in the United States for them for the period of twenty-five years, shall further recite and provide that in event of the death of either said William or Maggie during said period of twenty-five years—then the possession and use of the lands allotted to both shall be in the survivor and patents for the land allotted to both shall issue to the survivor, discharged of the said trust at the expiration of the said twenty-five years, provided said parties shall be living together as man and wife until the death of either.

§ 985. **Operation.**—[Art. X]. This agreement shall be in force from and after its approval by the Congress of the United States.

SUPPLEMENTAL ARTICLES

§ 986. **The President may extend the trust period for allotments of Iowa.**—[Art. XI]. It is now further agreed by the Commission, on the part of the United States, at the

special instance and request of Chief Tohee, that if the Iowas at the expiration of said term of twenty-five years, during which the United States shall hold the allotments in trust for them shall represent to the President that they desire said trust continued, then the President may, in his discretion, extend said period, during which said lands are so held in trust for any period not exceeding five years.

§ 987. An additional 10 acre square may be held in common, etc.—[Art. XII]. It is further agreed that when said allotments are being made, the Chief of the Iowas may select an additional ten acres in a square form for the use of said tribe in said reservation, conforming in boundaries to the legal subdivisions of land therein, which shall be held by said tribe in common but when abandoned by said tribe shall become the property of the United States. [End of agreement.]

§ 988. Descent.—[6]. That for the purpose of determining the descent of land to the heirs of any deceased Indian, under the provisions of article four of said agreement with the Iowa Tribe of Indians or under any law or treaty authorizing the issuance of a patent to an Indian or his heirs, according to the laws of the state or territory where such land is located, whenever any man and woman, either of whom is in whole or in part of Indian blood, shall have cohabited together as husband and wife according to the custom and manner of Indian life, the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of persons so living together, and every child of Indian blood, in whole or in part, otherwise illegitimate shall for such purpose be taken and deemed to be the legitimate issue of the father of such child.¹

¹ Section 6 of Act Feb. 13, 1891, c. 165, 26 Stat. 758, providing procedure on allotment of Iowa lands.

CHAPTER 66

ALLOTMENT AGREEMENT WITH THE KANSAS OR KAW TRIBE OF INDIANS, APPROVED AND RATIFIED BY ACT OF CONGRESS OF JULY 1, 1902, AND SPECIAL LEGISLATION APPLICABLE TO KAWS.

(CHAPTER 1361, 32 STAT. 636, RECITALS AS TO PARTIES AND SIGNATURES OMITTED)

- § 989. Agreement—Roll of the tribe.
- 990. Division of tribal lands.
- 991. Allotments nontaxable and inalienable.
- 992. Selection of homesteads.
- 993. Allotment of remaining lands.
- 994. Alienation—Surplus lands.
- 995. Proviso—Lands of minors—Inalienable.
- 996. Existing surveys.
- 997. Division of surplus lands.
- 998. Prior selections.
- 999. Execution of deeds to allottees.
- 1000. Separate deeds.
- 1001. Recording deeds.
- 1002. Secretary of Interior to approve deeds.
- 1003. School lands.
- 1004. Cemetery.
- 1005. Townsite—Sale of lots—Rejection of bids—Purchase of Improved lots—Tax exemption.
- 1006. Pro rata division of tribal funds.
- 1007. Sale of tribal lands in Kansas.
- 1008. Payment to heirs, etc.
- 1009. Permission to sell, etc.
- 1010. Taxation.
- 1011. Adult heirs.
- 1012. Commission to adjust claims against the United States.
- 1013. Ratification, etc., requested.
- 1014. Ratification—Amendments.
- 1014a. Act of March 3, 1909, authorizing Secretary to sell surplus lands of the Kansas or Kaw and Osage allottees.

§ 989. Agreement—Roll of the tribe.—[1]. The roll of the Kansas or Kaw Tribe of Indians, as shown by the records of the United States in the office of the United States Indian agent at the Osage Indian Agency, Oklahoma Territory, now in charge of said tribe, as it existed on the first day of December, 1901, and all descendants born between December first, 1901, and December first, 1902, to persons

whose names were on said roll on December first, 1901, is hereby declared to be the roll of said tribe, and to constitute the legal membership of said tribe, and the lands and money of said tribe shall be divided among the members of said tribe, as shown by the roll made up, as directed herein, and the lands and moneys of said tribe shall be divided among said members as hereinafter provided.

§ 990. **Division of tribal lands.**—[2]. All lands belonging to said Kansas or Kaw Tribe of Indians located in the territory of Oklahoma, except as herein provided, shall be divided among the members of said tribe, giving to each his or her fair share thereof, in acres, as follows:

§ 991. **Allotments nontaxable and inalienable.**—[2]. First. There shall be set aside to each member of said tribe, as shown by the roll of membership December first, 1901, and their descendants born between that date and December first, 1902, one hundred and sixty (160) acres of land for an homestead, which shall be nontaxable and inalienable for the period of twenty-five years from the first day of January, 1903, except as hereinafter provided.

§ 992. **Selection of homesteads.**—[2]. Where the members of said tribe have already selected their homesteads of one hundred and sixty acres, the same are hereby confirmed, and the members who have not selected their homesteads shall do so within thirty days after the ratification of this agreement; and if any member fails to make such selection within said time, then it shall be the duty of the United States Indian agent in charge of said tribe to make the selection for such member or members: Provided, that selections of homesteads for minors shall be made by his or her parents, and the selections of homesteads for others than minors, who are unable for any reason to make their selections, shall be made by the United States Indian agent in charge of said tribes: Provided further, that in case there are any children born to members of said tribe between the ratification of this agreement and the first day of December.

1902, selection shall be made for them within thirty days after their birth, and all selections must be made on or before January first, 1903.

§ 993. Allotment of remaining lands.—[2]. Second. After each member has selected his or her homestead the remaining lands in Oklahoma Territory belonging to said tribe, except as herein provided, shall be divided equally, in acres, among said members, giving to each, as nearly as practicable, the same number of acres of farming and grazing lands, and the share of each member shall be given to him or her as near as possible to his or her homestead selections.

§ 994. Alienation—Surplus lands.—[2]. The lands, other than the homestead, set aside to each member shall be free from taxation as long as the title remains in said member, but in no event to exceed twenty-five years, and the same shall not be sold or encumbered in any way before the expiration of ten years from the date of the deed to said member, except as herein provided and with the approval of the Secretary of the Interior, and it shall be his duty to carefully investigate each sale or transaction before he approves the same:

§ 995. Proviso—Lands of minors—Inalienable.—[2]. Provided, that the lands of minors shall be inalienable during their minority:

§ 996. Existing surveys.—[2]. Provided further, that all selections and allotments made under this agreement shall conform to existing surveys of said reservation in tracts of not less than eighty (80) acres.

§ 997. Division of surplus lands.—[3]. It shall be the duty of the United States Indian agent, the clerk in charge of the Kaw subagency, together with a committee of three members of the tribe, to be selected jointly by the agent, clerk in charge, and the council of the tribe, to divide the

surplus lands among the members of the tribe, in accordance with this agreement.

§ 998. Prior selections.—[4]. In selecting his or her homestead, a member shall not be permitted to select lands already selected by another member of said tribe, unless such other member is in possession of more lands than he and his family are entitled to under this agreement; in such case, the member in possession shall have the right to make the first selection.

§ 999. Execution of deeds to allottees.—[5]. The Secretary of the Interior shall furnish the head chief of said tribe deeds, properly filled out, for the conveyances herein provided for, and said head chief shall thereupon, and in the presence of the agent in charge of said tribe, proceed to execute said deeds, and when the same are executed they shall be delivered to the United States Indian agent in charge of said tribe, and it shall be his duty to see that said deeds are properly delivered to the members entitled to the same:

§ 1000. Separate deeds.—[5]. Provided, that a separate deed shall be given to each member for the lands conveyed as a homestead:

§ 1001. Recording deeds.—[5]. Provided further, that if, for any cause, any member of said tribe is unable to receive his or her deed, then it shall be the duty of such United States Indian agent to see that such deed is properly recorded with the register of deeds for the county in Oklahoma Territory to which the Kansas Reservation is attached.

§ 1002. Secretary of Interior to approve deeds.—[6]. All deeds shall be approved by the Secretary of the Interior, which approval, and the signing of the same by the head chief, shall operate as a relinquishment to the individual member of all the right, title, and interest of the United States and of the Kansas or Kaw Tribe of Indians

(as a tribe) in and to the lands embraced in his or her deed. All disputes between the members of said tribe as to the right of possession in the selection of homesteads shall be adjudicated and settled by the United States Indian agent in charge of said tribe, subject to the approval of the Commissioner of Indian Affairs.

§ 1003. **School lands.**—[7]. There shall be set aside and reserved from selection or allotment one hundred and sixty (160) acres of land, including the school and agency buildings, to conform to the public survey, which said one hundred and sixty (160) acres of land said tribe cedes to the United States, including the improvements; and the United States agrees to maintain a school for the education of children of Indian blood at said place for the period of ten (10) years, and as much longer as it deems necessary, the land and improvements to be subject to final disposition by Congress. Said land shall be exempt from taxation.

§ 1004. **Cemetery.**—[7]. There shall be reserved from allotment twenty (20) acres of land, including the present cemetery, to be used as a cemetery, and the same shall be exempt from taxation.

§ 1005. **Townsite—Sale of lots—Rejection of bids—Purchase of improved lots—Tax exemption.**—[7]. There shall be reserved from allotment eighty (80) acres, including the dwellings now used by the agency trader, and other buildings at said agency not used by the employees of the government, which said eighty (80) acres shall be set aside as a townsite, which shall be surveyed and laid off into town lots. The lots in said townsite are to be sold at public auction to the highest bidder, under such rules and regulations as may be prescribed by the Secretary of the Interior, and the proceeds of said sale, after deducting the cost of the survey and sale, shall be placed in the treasury to the credit of said Indians: Provided, that the Secretary of the Interior may reject any and all bids for such town lots: Pro-

vided further, that if any member of said tribe is in possession of any town lot or lots, and has any building and other improvements thereon, he shall have the right to purchase one lot seventy-five (75) feet wide by one hundred and sixty (160) feet deep, including his or her improvements, at such price as the council of said tribe may fix on the lots, exclusive of improvements: Provided, that the lots unsold shall be exempt from taxation as long as the title remains in the tribe.

§ 1006. Pro rata division of tribal funds.—[8]. The funds of said tribe, including the one hundred and thirty-five thousand dollars (\$135,000) due said tribe under the treaty of June 14, 1846 (see Ninth U. S. S. page 842); the Kansas school fund, amounting to twenty-seven thousand one hundred seventy-four dollars and forty-one cents (\$27,174.41) (see 21st U. S. S. page 70), and the Kansas general fund, amounting to twenty-six thousand nine hundred seventy-eight dollars and eighty-nine cents (\$26,978.89), derived from the sale of lands in Kansas and all other moneys now due, or that may be found to be due said Indians; all money that may be received from the sale of their lands in Kansas, the money received from the sale of town lots in Oklahoma Territory, as hereinbefore provided, and all money found to be due to said tribe on claims against the United States, shall be segregated and placed to the credit of the individual members of said Kansas or Kaw tribe of Indians on a basis of a pro rata division among the members of said tribe, as shown by the roll of membership of said tribe, as provided, on the first day of December, 1902, said credits to draw interest, as now authorized by law, at the rate of five (5) per centum per annum, and the interest that may accrue thereon shall be paid annually to the members entitled thereto, except in cases of minors, in which cases the interest shall be paid annually to the parent until the child for whom the interest is so paid arrives at the age of twenty-one (21) years: Provided,

that if the Commissioner of Indian Affairs becomes satisfied that the interest and payment of any minor is being misused or squandered, he may withhold the payment of such interest. In case of minors whose parents have died the interest shall be paid to the legal guardian, as above provided: Provided, that the amount placed to the credit (together with the accrued interest) of each member of the tribe of the age of twenty-one (21) years may be paid to such member in ten (10) equal payments, one payment each year: Provided further, that if the Secretary of the Interior deems it advisable, he may pay to any member of said tribe, over the age of twenty-one years, the full amount of the principal and interest that may be credited to such member: Provided further, that the sum ascertained to be due said tribe shall be segregated as soon as possible after December 1, 1902: Provided further, that when the children whose shares have been placed to their credit shall arrive at the age of twenty-one (21) years, before the expiration of ten (10) years from the date of the ratification of this agreement, then the share due such member or members may be paid to them at the annual payments after they arrive at the age of twenty-one (21) years in equal amounts, so that such share will be fully paid at the expiration of said ten years; and where such children arrive at the age of twenty-one (21) years at or after the expiration of said ten years, then the full amount due such member may be paid to them at the next annual payment after they arrive at the age of twenty-one (21) years: Provided further, that the Secretary of the Interior may withhold any of the payments provided for in this section if, in his judgment, it would be to the best interest of the member entitled to said payment to do so:

§ 1007. Sale of tribal lands in Kansas.—[8]. Provided further, that the Secretary of the Interior shall offer at public sale all tracts or parcels of the Kansas trust and diminished reserve lands, within the state of Kansas, be-

longing to said Kansas or Kaw Tribe of Indians, for which no application has been filed under the provisions of existing laws in relation thereto. Such lands shall be offered for sale by advertisement for not less than thirty (30) days, in two newspapers in the proper land district, one of which shall be published in Morris county, Kansas, and by posting in the local land office notice for the same period, and, upon the day named in such notice, such lands shall be sold for cash to the highest bidder at not less than the price fixed by law.

§ 1008. **Payment to heirs, etc.**—[9]. That all funds remaining to the credit of or found to be due from the United States to any member of said tribe, at his or her death, shall be paid to his or her heirs under the laws of the territory or state in which such member resides at the date of his or her death.

§ 1009. **Permission to sell, etc.**—[10]. The Secretary of the Interior may, in his discretion, at the request of any adult member of said tribe, issue a certificate to such member authorizing him to sell and convey any or all lands deeded him by reason of this agreement, and may pay such member at the next annual payment his or her pro rata share of the funds of said tribe, if, upon consideration and examination of the request, the said Secretary shall find said member to be fully competent and capable of managing and caring for his or her individual affairs:

§ 1010. **Taxation.**—[10]. Provided, that upon the issuance of said certificate, the lands of such member, both homestead and surplus, shall become subject to taxation, and such member shall have the right to manage and dispose of such property the same as any other citizen of the United States, and upon the issuance of said certificate and the payment of the funds due him or her such member shall be dropped from the rolls of said tribe.

§ 1011. **Adult heirs.**—[11]. That the adult heirs of any deceased Kansas or Kaw Indian, whose selection has been

made or to whom a deed has been issued for his or her share of the lands of said tribe in Oklahoma Territory, may sell and convey the lands inherited from such decedent; and, if there be both adult and minor heirs of such inherited lands, then such minors may join in a sale thereof by a guardian duly appointed by the proper court of the county in which said minor or minors may reside, upon an order of such court made upon petition filed by such guardian; all conveyances made under this provision to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.

§ 1012. **Commission to adjust claims against the United States.**—[12]. All claims, of whatever nature, which said Kansas or Kaw Tribe of Indians may have or claim to have against the United States shall be submitted to a commission to be appointed by the Secretary of the Interior from the officers or employees of his Department for investigation, consideration, and settlement; and the United States shall, without delay, render to said tribe of Indians a complete accounting of all moneys agreed to be paid to said tribe to which said tribe may be entitled under any treaty or act of Congress. If the settlement of the claims of said tribe, submitted to said commission (and the accounting) is satisfactory to said tribe, the amount found due shall be placed to the credit of the members of said tribe, according to the terms of this agreement, within one year after the report of said commission is made. But if the settlement of the claims of said tribe or the accounting is not satisfactory to said tribe, or if they are satisfactory and Congress fails to appropriate the money to pay the same within one year after the report of said commission and the accounting, then the said tribe of Indians shall have two years from the date of the report and accounting in which to enter a suit in the Court of Claims, with the right of appeal to the Supreme Court of the United States, by either party, for the amount due or claimed to be due

said tribe from the United States under any treaties or laws of Congress, or for the misappropriation of any of the funds of said tribe or the failure of the United States to pay the money due the tribe. And jurisdiction is hereby conferred upon said United States Court of Claims to hear and determine all claims of said tribe against the United States and to enter judgment thereon. If the question is submitted to said court, it shall settle all the rights, both legal and equitable, of both the said Kansas or Kaw Tribe of Indians and of the United States. The claims submitted to the commission may be submitted by one or more petitions, to be filed by said tribe with said commission. If an action is brought in the Court of Claims, it shall be presented by a single petition, making the United States party defendant, and shall set forth all the facts on which the said Kansas or Kaw Tribe of Indians bases its claim or claims against the United States, and the said petition may be verified by the agent or attorney of said tribe, upon information or belief as to the existence of such facts, and no other statements or verification shall be necessary. Official letters, papers, reports, and public records, or certified copies thereof, may be used as evidence.

§ 1013. Ratification, etc., requested.—[13]. The said Kansas or Kaw Indians hereby memorialize Congress to ratify and confirm this agreement and to make provision for carrying it into effect: Provided, that if any material amendments are made in this agreement by Congress the same shall not become effective until such amendments are approved by a majority of the adult members of the Kansas or Kaw Tribe of Indians.

§ 1014. Ratification—Amendments.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the said agreement be, and the same hereby is, accepted, ratified, and confirmed with the following amendments: Strike out

section thirteen and change section fourteen so as to read section thirteen.

Approved July 1, 1902.

§ 1014a. Act of March 3, 1909, authorizing Secretary to sell surplus lands of the Kansas or Kaw and Osage allottees.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of the Interior be, and he hereby is, authorized and empowered, upon application, to sell, under such rules and regulations as he may prescribe, part or all of the surplus lands of any member of the Kaw or Kansas and the Osage Tribes of Indians in Oklahoma: Provided, that the sales of the Osage lands shall be subject to the reserved rights of the tribe in oil, gas, and other minerals.¹

¹ 35 Stat. 778, c. 256.

CHAPTER 67

ALLOTMENT AGREEMENT BETWEEN THE KIOWA, COMANCHE AND APACHE TRIBES OF INDIANS AND THE UNITED STATES, APPROVED JUNE 6, 1900, AND SPECIAL LEGISLATION APPLICABLE

(CHAPTER 813, 31 STAT. 672-676, 1 KAPP. 709. RECITALS AS TO PARTIES AND SIGNATURES OMITTED)

- § 1015. Cession of lands.
- 1016. Allotments in severalty.
- 1017. Grazing lands.
- 1018. Reservation of land for public schools, etc.
- 1019. Limit of time for selecting allotment—Proviso—Extension of time, etc.
- 1020. Allotments to be held in trust for twenty-five years.
- 1021. Consideration.
- 1022. Allotments by Interior Department may be governed by this agreement.
- 1023. Existing leases confirmed.
- 1024. Certain persons married into tribes entitled to allotment.
- 1025. Ratification.
- 1026. Special allotment agent, etc.
- 1026a. Authorizing sale of unallotted tribal lands.

§ 1015. Cession of lands.—[Art. I]. Subject of the allotment of land, in severalty to the individual members of the Comanche, Kiowa, and Apache Tribes of Indians in the Indian Territory, as hereinafter provided for, and subject to the setting apart as grazing lands for said Indians, four hundred and eighty thousand acres of land as hereinafter provided for, and subject to the conditions hereinafter imposed, and for the considerations hereinafter mentioned, the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, without any reservation whatever, express or implied, all their claim, title, and interest, of every kind and character, in and to the lands embraced in the following described tract of country in the Indian Territory to wit: Commencing at a point where the Washita river crosses the ninety-eighth meridian west from Greenwich;

thence up the Washita river, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence due west to the north fork of Red river, provided said line strikes said river east of the one-hundredth meridian of west longitude; if not, then only to said meridian line, and thence due south, on said meridian line, to the said north fork of Red river; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red river; thence down said Red river, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian line, to the place of beginning.

§ 1016. Allotments in severalty.—[Art. II]. Out of the lands ceded, conveyed, transferred, relinquished, and surrendered by article I hereof, and in part consideration for the cession thereof, it is agreed by the United States that each member of said Comanche, Kiowa, and Apache tribes of Indians over the age of eighteen (18) years shall have the right to select for himself or herself one hundred and sixty (160) acres of land to be held and owned in severalty, to conform to the legal surveys in boundary; and that the father, or, if he be dead, the mother, if members of either of said tribes of Indians, shall have the right to select a like amount of land for each of his or her children under the age of eighteen (18) years; and that the Commissioner of Indian Affairs, or some one by him appointed for the purpose, shall select a like amount of land for each orphan child belonging to either of said tribes under the age of eighteen (18) years.

§ 1017. Grazing lands.—[Art. III]. That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes four hundred and eighty thousand acres of grazing lands, to be selected

by the Secretary of the Interior, either in one or more tracts as will best subserve the interest of said Indians. It is hereby further expressly agreed that no person shall have the right to make his or her selection of land in any part of said reservation that is now used or occupied for military, agency, school, school farm, religious, or other public uses, or in sections sixteen (16) and thirty-six (36) in each congressional township, except in cases where any Comanche, Kiowa, or Apache Indian has heretofore made improvements upon and now uses and occupies a part of said sections sixteen (16) and thirty-six (36), such Indian may make his or her selection within the boundaries so prescribed so as to include his or her improvements. It is further agreed that wherever in said reservation any Indian, entitled to take lands in severalty hereunder, has made improvements, and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection within the area above provided for allotments, so as to include his or her said improvements.

§ 1018. **Reservation of land for public schools, etc.—**
[Art. III]. It is further agreed that said sections sixteen (16) and thirty-six (36) in each congressional township in said reservation shall not become subject to homestead entry but shall be held by the United States and finally sold for public school purposes. It is hereby further agreed that wherever in said reservation any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians, the land so occupied may be allotted and confirmed to such society or organization, not however, to exceed one hundred and sixty (160) acres of land to any one society or organization so long as the same shall be so occupied and used; and such land shall not be subject to homestead entry.

§ 1019. **Limit of time for selecting allotments—Proviso—Extension of time, etc.—[Art IV].** All allotments hereunder shall be selected within ninety days from the ratification of this agreement by the Congress of the United States: Provided, the Secretary of the Interior, in his discretion, may extend the time for making such selection: and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in that time, then the allotting agent in charge of the work of making such allotments shall within the next thirty (30) days after said time make allotments to such Indians, which shall have the same force and effect as if the selection were made by the Indian.

§ 1020. **Allotments to be held in trust for twenty-five years.—[Art. V].** When said allotments of land shall have been selected and taken as aforesaid, and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for the period of twenty-five (25) years, in the time and manner and to the extent provided for in the Act of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and territories over the Indians, and for other purposes," approved February 8, 1887, and an act amendatory thereof, approved February 28, 1891.

And at the expiration of the said period of twenty-five (25) years the titles thereto shall be conveyed in fee simple to the allottees or their heirs, free from all incumbrances.

§ 1021. **Consideration.—[Art. VI].** As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache Tribes of Indians, in the Indian Territory, the sum of two million (\$2,000,000)

dollars, as follows: Five hundred thousand (\$500,000) dollars to be distributed per capita to the members of said tribes at such times and in such manner as the Secretary of the Interior shall deem to be for the best interests of said Indians, which sum is hereby appropriated out of any funds in the treasury not otherwise appropriated; and any part of the same remaining unpaid shall draw interest at the rate of five per centum while remaining in the treasury, which interest shall be paid to the Indians annually per capita; and the remaining one million five hundred thousand (\$1,500,000) dollars to be retained in the treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to the said Indians per capita annually.

Nothing herein contained shall be held to affect in any way any annuities due said Indians under existing laws, agreements, or treaties.

§ 1022. Allotments by Interior Department may be governed by this agreement.—[Art. VIII]. It is further agreed that wherever in said reservation any member of any of the tribes of said Indians has, in pursuance of any laws or under any rules or regulations of the Interior Department taken an allotment, such allotment, at the option of the allottee, shall be confirmed and governed by all the conditions attached to allotments taken under this agreement.

§ 1023. Existing leases confirmed.—[Art. IX]. It is further agreed that any and all leases made in pursuance of the laws of the United States of any part of said reservation which may be in force at the time of the ratification by Congress of this agreement shall remain in force the same as if this agreement had not been made.

§ 1024. Certain persons married into tribes entitled to allotment.—[Art. X]. It is further agreed that the following named persons, not members by blood of either of

said tribes, but who have married into one of the tribes, to wit, Mabel R. Given, Thomas F. Woodward, William Wyatt, Kiowa Dutch, John Nestill, James N. Jones, Christian Keoh-tah, Edward L. Clark, George Conover, William Deitrick, Ben Roach, Lewis Bentz, Abilene, James Gard-loupe, John Sanchez, the wife of Boone Chandler, whose given name is unknown, Emmitt Cox and Horace P. Jones, shall each be entitled to all the benefits of land and money conferred by this agreement, the same as if members by blood of one of said tribes, and that Emsy S. Smith, David Grantham, Zonee Adams, John T. Hill, and J. J. Methvin, friends of said Indians, who have rendered to said Indians valuable services, shall each be entitled to all the benefits, in land only, conferred under this agreement, the same as if members of said tribes.

§ 1025. Ratification.—[Art. XI]. This agreement shall be effective only when ratified by the Congress of the United States.

§ 1026. Special allotment agent, etc.—Said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended.

That the Secretary of the Interior is hereby authorized and directed to cause the allotments of said lands, provided for in said treaty among said Indians, to be made by any Indian inspector or special agent.

§ 1026a. Authorizing sale of unallotted tribal lands.—[24]. That the tracts of land remaining unsold in the Kiowa, Comanche, and Apache reservations under the Act of June fifth, nineteen hundred and six, and also under the Act of June sixth, nineteen hundred, shall be again and at once offered for sale and sold under the provisions and terms of said Act of June fifth, nineteen hundred and six: Provided, that said lands shall be sold under such regulations as may be prescribed by the Secretary of the Interior and for not less than one dollar per acre: And provided further, that any purchaser of said land may at his option

pay the entire amount that is due in cash for such land and receive his title therefor without the necessity of actually settling thereon: Provided further, that before offering said lands for sale the Secretary of the Interior shall allot one hundred and sixty acres of land to each child of Indian parentage born since June fifth, nineteen hundred and six, whose father or mother was a duly enrolled member of either the Kiowa, Comanche, or Apache Tribe of Indians and entitled to allotment of land under the Act of June fifth, nineteen hundred and six, opening said Kiowa, Comanche and Apache reservations to settlement, said allotments to be made of lands remaining unsold known as the pasture reserves in said reservations.

The Secretary of the Interior shall make all necessary rules and issue all necessary instructions to carry the provisions of this act into effect: Provided, that any person who has heretofore entered any of said land under said Act of June fifth, nineteen hundred and six, shall receive patents therefor by paying all the deferred installments of purchase money and proving compliance with the requirements of the homestead laws at any time after the expiration of ten months from the date of his entry.¹

¹ From Act May 29, 1908, c. 216, 35 Stat. 444.

CHAPTER 68

ALLOTMENT AGREEMENT WITH THE KICKAPOO TRIBE OF
INDIANS IN OKLAHOMA TERRITORY, APPROVED AND
RATIFIED BY ACT OF CONGRESS IN 1893

(CHAPTER 203, 27 STAT. 557, 1 KAPP. 430. RECITALS AS TO PARTIES
TO AGREEMENT AND SIGNATURES OMITTED)

- § 1027. Lands ceded absolutely.
1028. Allotments in severalty.
1029. Selection of land by Indians.
1030. Occupied land, reserved from allotment.
1031. Limit of time for allotment selections by Indians.
1032. Titles to be held in trust under terms of General Allotment Act.
1033. Conveyance in fee to allottee.
1034. Payment to tribe for lands ceded.
1035. Land used for religious, etc., work reserved from entry.

§ 1027. Lands ceded absolutely.—[Art. I]. The said Kickapoo Tribe of Indians in the Indian Territory hereby cede, convey, transfer, and relinquish, forever and absolutely, without any reservation whatever, all their claim, title, and interest of every kind and character in and to the lands embraced in the following described tract of country in the Indian Territory, to wit:

Commencing at the southwest corner of the Sac and Fox Reservation; thence north along the western boundary of said reservation to the Deep fork of the Canadian river; thence up said Deep fork to the point where it intersects the Indian meridian; thence south along said Indian meridian to the North fork of the Canadian river; thence down said river to the place of beginning.

§ 1028. Allotments in severalty.—[Art. II]. In consideration of the cession recited in the foregoing article, the United States agrees that in said tract of country there shall be allotted to each and every member, native and adopted, of said Kickapoo Tribe of Indians in the Indian Territory, 80 acres of land to conform in boundary to the legal surveys of said land.

§ 1029. **Selections of land by Indians.**—[Art. II]. Each and every member of said tribe of Indians over the age of eighteen years shall have the right to select for himself or herself 80 acres of land to be held and owned in severalty; and that the father, or, if he be dead, the mother shall have the right to select a like amount of land, under the same restrictions, for each of his or her children under the age of eighteen years; and that the Commissioner of Indian Affairs, or some one appointed by him for the purpose, shall select a like amount of land, under the same restrictions, for each orphan child belonging to said tribe under the age of eighteen years.

§ 1030. **Occupied land, reserved from allotment.**—[Art. II]. It is hereby further expressly agreed that no person shall have the right to make his or her selection of land in any part of said tract of country that is now used or occupied, or that has, or may hereafter be, set apart for military, agency school, school farm, religious, townsite, or other public uses, or in sections sixteen (16) and thirty-six (36) in each congressional township; provided, in cases where any member of said tribe of Indians has heretofore made improvements upon, and now occupies and uses, a part of said sections sixteen (16) and thirty-six (36), such persons may make his or her selection, according to the legal subdivisions, so as to include his or her improvements. It is further agreed that wherever, in said tract of country, any one of said Indians has made improvements and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection, to conform to legal subdivisions, however, so as to include such improvements.

§ 1031. **Limit of time for allotment selections by Indians.**—[Art. III]. All allotments hereunder shall be selected within ninety days from the ratification of this agreement by the Congress of the United States, provided the Secretary of the Interior in his discretion may extend the

time for making such selections; and should any Indian entitled to allotment hereunder fail or refuse to make his or her selection of land in such time, then the allotting agent in charge of said work of making such allotments, shall, within the next thirty (30) days after said time, make allotments to such Indians, which shall have the same force and effect as if the selections had been made by the Indians themselves.

§ 1032. **Titles to be held in trust under terms of General Allotment Act.**—[Art. IV]. When said allotments of land shall have been selected and taken as aforesaid, and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the benefit of the allottees, respectively, for a period of twenty-five (25) years, in the manner and to the extent provided for in the Act of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and territories over the Indians, and for other purposes," approved February 8, 1887.

§ 1033. **Conveyance in fee to allottee.**—[Art. IV]. And at the expiration of the said twenty-five (25) years the title thereto shall be conveyed in fee simple to the allottees or their heirs free from all incumbrances, provided the President may at the end of said period extend the time the land shall be so held, in accordance with the provisions of the above-recited act.

§ 1034. **Payment to tribe for lands ceded.**—[Art. V]. In addition to the allotments above provided for, and the other benefits to be received under the preceding articles, and as the only further consideration to be paid for the cession and relinquishment of title above recited, the United States agrees to pay the said Kickapoo Indians, to be distributed among them per capita, under the direction of the Commissioner of Indian Affairs, for the improvement of their said allotments, and for other purposes for their

benefit, the sum of sixty-four thousand and six hundred and fifty (\$64,650) dollars; provided, that the number of allotments of land provided for shall not exceed three hundred (300). But if the number of allotments shall exceed three hundred (300), then there shall be deducted from the said sum of sixty-four thousand and six hundred and fifty (\$64,650) dollars, the sum of fifty (\$50) dollars for each allotment in excess of the three hundred (300); Provided, however, that should the Kickapoos elect to leave any or all of said money in the treasury of the United States, it shall bear interest at the rate of five per cent per annum after the ratification by Congress of this contract.

§ 1035. Land used for religious, etc., work reserved from entry.—[Art. VI]. It is hereby further agreed that wherever, in this reservation, any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians the land so occupied may be allotted and confirmed to such society or organization, not however to exceed one hundred and sixty (160) acres of land to any one society or organization, so long as the same shall be so occupied and—used, and such land shall not be subject to homestead entry.

CHAPTER 69

ACT OF CONGRESS OF JUNE 28, 1906, FOR DIVISION OF LANDS AND FUNDS OF OSAGE INDIANS AND FOR OTHER PURPOSES (CHAPTER 3572, 34 STATUTES 539), AND OTHER LEGISLATION RELATING TO OSAGE ALLOTMENTS

- § 1036. Tribal roll as a basis for the division of tribal lands.
- 1037. Division of land among members of the tribe.
- 1038. Selection.
- 1039. Ratification of selection where no contest pending.
- 1040. Allotment to children born after January 1, 1906, and prior to January 1, 1907.
- 1041. Prior right of possession and improvements protected in making selection of allotments.
- 1042. Second selection of land in allotment.
- 1043. Third selection of land in allotment.
- 1044. Homesteads inalienable and nontaxable unless otherwise provided.
- 1045. Equal division of lands remaining after third selection.
- 1046. Allotment commission, duties, expenses, etc.
- 1047. Allottees authorized to sell allotted lands except homestead on approval of Secretary of the Interior.
- 1048. Certificate of competency, lands taxable upon issuance.
- 1049. Oil, gas, coal and other mineral leases.
- 1050. Donation of land to Sisters of Saint Francis.
- 1051. Land reserved for dwelling purposes may be sold under direction of Secretary.
- 1052. Reservation for Osage Boarding School may be sold on request of tribe.
- 1053. Sale of government buildings with certain reservations.
- 1054. Cemetery reservation.
- 1055. Continuation of Osage townsite commission.
- 1056. Reservation of oil, gas, coal and other minerals to the tribe for a period of twenty-five years from April 8, 1906.
- 1057. Moneys due Osages to be held as trust fund.
- 1058. Royalties to be deposited as credit to Osages.
- 1059. Certain amount of royalties reserved for school purposes.
- 1060. Royalties—Certain amount reserved for agency purposes.
- 1061. Termination of trust and division of oil and other minerals.
- 1062. Descent to be controlled by Oklahoma statute with certain exceptions.
- 1063. Leasing for farming purposes permitted subject to approval of Secretary of Interior.
- 1064. Deeds to allotted lands to be executed by principal chief and approved by Secretary of the Interior.
- 1065. Election of tribal officers.
- 1066. Highways along section lines without compensation.
- 1067. Lands for railroad purposes.

- § 1068. Railway companies not to acquire any right to oil, gas, or other minerals under right of way.
1069. Secretary of Interior to carry out provisions of allotment act.
1070. Act of March 3, 1909, authorizing Secretary to sell surplus lands of the Kansas or Kaw and Osage allottees.

§ 1036. Tribal roll as a basis for the division of tribal lands.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the roll of the Osage Tribe of Indians, as shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Oklahoma Territory, as it existed on the first day of January, nineteen hundred and six, and all children born between January first, nineteen hundred and six, and July first, nineteen hundred and seven, to persons whose names are on said roll on January first, nineteen hundred and six, and all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January first, nineteen hundred and six, including the children of members of the tribe who have, or have had, white husbands, is hereby declared to be the roll of said tribe and to constitute the legal membership thereof:

Provided, that the principal chief of the Osages shall, within three months from and after the approval of this act, file with the Secretary of the Interior a list of the names which the tribe claims were placed upon the roll by fraud, but no names shall be included in said list of any person or his descendants that was placed on said roll prior to the thirty-first day of December, eighteen hundred and eighty-one, the date of the adoption of the Osage constitution, and the Secretary of the Interior, as early as practicable, shall carefully investigate such cases and shall determine which of said persons, if any, are entitled to enrollment; but the tribe must affirmatively show what names have been placed upon said roll by fraud; but where the rights of persons to enrollment to the Osage roll have been in-

vestigated by the Interior Department and it has been determined by the Secretary of the Interior that such persons were entitled to enrollment, their names shall not be stricken from the roll for fraud except upon newly discovered evidence; and the Secretary of the Interior shall have authority to place on the Osage roll the names of all persons found by him, after investigation, to be so entitled, whose applications were pending on the date of the approval of this act; and the said Secretary of the Interior is hereby authorized to strike from the said roll the names of persons or their descendants which he finds were placed thereon by or through fraud, and the said roll as above provided, after the revision and approval of the Secretary of the Interior, as herein provided, shall constitute the approved roll of said tribe; and the action of the Secretary of the Interior in the revision of the roll as herein provided shall be final, and the provisions of the Act of Congress of August fifteenth, eighteen hundred and ninety-four, Twenty-Eighth Statutes at Large, page three hundred and five, granting persons of Indian blood who have been denied allotments the right to appeal to the courts, are hereby repealed as far as the same relate to the Osage Indians; and the tribal lands and tribal funds of said tribe shall be equally divided among the members of said tribe as hereinafter provided.

§ 1037. Division of land among members of the tribe.—[2]. That all lands belonging to the Osage tribe of Indians in Oklahoma Territory, except as herein provided, shall be divided among the members of said tribe, giving to each his or her fair share thereof in acres, as follows:

§ 1038. Selection.—(First) Each member of said tribe, as shown by the roll of membership made up as herein provided, shall be permitted to select one hundred and sixty acres of land as a first selection; and the adult members shall select their first selections and file notice of the same with the United States Indian agent for the Osages within three months after the approval of this act:

§ 1039. **Ratification of selection where no contest pending.**—Provided, that all selections of lands heretofore made by any member of said tribe, against which no contest is pending, be, and the same are hereby, ratified and confirmed as one of the selections of such member. And if any adult member fails, refuses, or is unable to make such selection within said time, then it shall be the duty of the United States Indian agent for the Osages to make such selection for such member or members, subject to the approval of the Secretary of the Interior. That all said first selections for minors shall be made by the United States Indian agent for the Osages, subject to the approval of the Secretary of the Interior: Provided, that said first selections for minors having parents may be made by said parents, and the word “minor” or “minors” used in this act shall be held to mean those who are under twenty-one years of age: And provided further,

§ 1040. **Allotment to children born after January 1, 1906, and prior to January 1, 1907.**—That all children born to members of said tribe between January first, nineteen hundred and six, and the first day of January, nineteen hundred and seven, shall have their selections made for them within six months after approval of this act, or within six months after their respective births. That all children born to members of said tribe on and after the first day of January, nineteen hundred and seven, and before the first day of July, nineteen hundred and seven, shall have their selections made for them on or before the last day of July, nineteen hundred and seven, the proof of birth of such children to be made to the United States Indian agent for the Osages.

§ 1041. **Prior right of possession and improvements protected in making selection of allotments.**—(Second) That in making his or her first selection of land, as herein provided for, a member shall not be permitted to select land already selected by, or in possession of, another mem-

ber of said tribe as a first selection, unless such other member is in possession of more land than he and his family are entitled to for first selections under this act; and in such cases the member in possession and having houses, orchards, barns, or plowed land thereon shall have the prior right to make the first selection: Provided, that where members of the tribe are in possession of more land than they are entitled to for first selections herein, said members shall have sixty days after the approval of this act to dispose of the improvements on said lands to other members of the tribe.

§ 1042. Second selection of land in allotment.—(Third) After each member has selected his or her first selection as herein provided, he or she shall be permitted to make a second selection of one hundred and sixty acres of land in the manner herein provided for the first selection.

§ 1043. Third selection of land in allotment.—(Fourth). After each member has selected his or her second selection of one hundred and sixty acres of land as herein provided, he or she shall be permitted to make a third selection of one hundred and sixty acres of land in the manner herein provided for the first and second selections: Provided, that all selections herein provided for shall conform to the existing public surveys in tracts of not less than forty acres, or a legal subdivision of a less amount, designated a "lot."

§ 1044. Homesteads inalienable and nontaxable unless otherwise provided.—Each member of said tribe shall be permitted to designate which of his three selections shall be a homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and nontaxable until otherwise provided by act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land, and shall be inalienable for twenty-five years, except as hereinafter provided.

§ 1045. **Equal division of lands remaining after third selection.**—(Fifth) After each member has selected his or her first, second, and third selections of one hundred and sixty acres of land, as herein provided, the remaining lands of said tribe in Oklahoma Territory, except as herein provided, shall be divided as equally as practicable among said members by a commission to be appointed to supervise the selection and division of said Osage lands.

§ 1046. **Allotment commission, duties, expenses, etc.**—(Sixth) The selection and division of lands herein provided for shall be made under the supervision of, or by, a commission consisting of one member of the Osage Tribe, to be selected by the Osage Council, and two persons to be selected by the Commissioner of Indian Affairs subject to the approval of the Secretary of the Interior; and said commission shall settle all controversies between members of the tribe relative to said selections of land; and the schedules of said selections and division of lands herein provided for shall be subject to the approval of the Secretary of the Interior. The surveys, salaries of said commission, and all other proper expenses necessary in making the selections and division of land as herein provided shall be paid by the Secretary of the Interior, out of any Osage funds derived from the sale of town lots, royalties from oil, gas or other minerals, or rents from grazing land.

§ 1047. **Allottee authorized to sell allotted lands except homestead on approval of Secretary of the Interior.**—(Seventh) That the Secretary of the Interior, in his discretion, at the request and upon the petition of any adult member of the tribe, may issue to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded him by reason of this act, except his homestead, which shall remain inalienable and nontaxable for a period of twenty-five years, or during the life of the homestead allottee, if upon investigation, consideration, and examination of the request he shall find any such member fully

competent and capable of transacting his or her own business and caring for his or her own individual affairs:

§ 1048. **Certificate of competency, lands taxable upon issuance.**—Provided, that upon the issuance of such certificate of competency the lands of such member (except his or her homestead) shall become subject to taxation, and such member, except as herein provided, shall have the right to manage, control, and dispose of his or her lands the same as any citizen of the United States: Provided, that the surplus lands shall be nontaxable for the period of three years from the approval of this act, except where certificates of competency are issued or in case of the death of the allottee, unless otherwise provided by Congress:

§ 1049. **Oil, gas, coal and other mineral leases.**—And provided further, that nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of twenty-five years, and the royalty to be paid to said tribe as hereinafter provided: And provided further, that the oil, gas, coal, and other minerals upon said allotted lands shall become the property of the individual owner of said land at the expiration of said twenty-five years, unless otherwise provided for by act of Congress.

§ 1050. **Donation of land to Sisters of Saint Francis.**—(Eighth) There shall be reserved from selection and division, as herein provided, one hundred and sixty acres on which the Saint Louis School, near Pawhuska, is located, and the one hundred and sixty acres of which the Saint John's School, on Hominy creek, Osage Indian Reservation, is located, said tracts to conform to the public surveys; and said tracts of land are hereby set aside and donated to the order of the Sisters of Saint Francis; and said tracts shall be conveyed to said order, the Sisters of Saint Francis, as early as practicable, by deed. There shall also be reserved from selection and division forty acres of land near Gray Horse, to be designated by the Secretary of the Interior,

on which are located the dwelling houses of John N. Florer, Walter O. Florer, and John L. Bird; and said John N. Florer shall be allowed to purchase said forty acres at the appraised value placed thereon by the Osage allotting commission, the proceeds of the sale to be placed to the credit of the Indians and to be distributed like other funds herein provided for.

§ 1051. **Land reserved for dwelling purposes may be sold under direction of Secretary.**—(Ninth) There shall be reserved from selection and division, as herein provided, the northeast quarter of section three, township twenty-five, range nine east, of the Indian meridian, and one hundred and sixty acres to conform to the public survey at the town of Gray Horse, including the government doctor's building, other valuable buildings, and the cemetery, and the one hundred and sixty acres to conform to the public survey, adjoining or near the townsite of Hominy; said lands or tracts are hereby set aside for the use and benefit of the Osage Indians, exclusively, for dwelling purposes, for a period of twenty-five years from and after the first day of January, nineteen hundred and seven: Provided, that said land may, in the discretion of the Osage tribe, be sold under such rules and regulations as the Secretary of the Interior may prescribe; and the proceeds of the same under such sale shall be apportioned and placed to the credit of the individual members of the tribe according to the roll herein provided for.

§ 1052. **Reservation for Osage Boarding School may be sold on request of tribes.**—(Tenth) The Osage Boarding School reserve of eighty-seven and five-tenths acres, and the reservoir reserve of seventeen and three-tenths acres, and the agent's residence reserve, together with all the buildings located on said reservations in the townsite of Pawhuska, as shown by the official plat of the same, are hereby reserved from selection and division as herein provided; and the same may be sold in the discretion of the

Osage Tribe, under such rules and regulations as the Secretary of the Interior may provide; and the proceeds of such sale shall be apportioned and placed to the credit of the individual members of said tribe according to the roll herein provided for.

§ 1053. Sale of government buildings with certain reservations.—(Eleventh) That the United States Indian agent's office building, the Osage Council building, and all other buildings which are for the occupancy and use of government employees, in the town of Pawhuska, together with the lots on which the said buildings are situated, shall be sold to the highest bidder as early as practicable, under such rules and regulations as the Secretary of the Interior may prescribe; and with the proceeds he shall erect other suitable buildings for the uses mentioned, on such sites as he may select, the remaining proceeds, if any, to be placed to the credit of the individual members of the Osage Tribe of Indians: Provided, that the house known as the chief's house, together with the lot or lots on which said house is located, and the house known as the United States interpreter's house, in Pawhuska, Oklahoma Territory, together with the lot or lots on which said houses are located, shall be reserved from sale to the highest bidder and shall be sold to the principal chief of the Osages and the United States interpreter for the Osages, respectively, at the appraised value of the same, said appraisement to be made by the Osage townsite commission, subject to the approval of the Secretary of the Interior.

§ 1054. Cemetery reservation. — (Twelfth) That the cemetery reserve of twenty acres in the townsite of Pawhuska, as shown by the official plat thereof, is hereby set aside and donated to the town of Pawhuska for the purposes of sepulture, on condition that if said cemetery reserve of twenty acres, or any part thereof, is used for purposes other than that of sepulture, the whole of said cemetery reserve of twenty acres shall revert to the use and benefit

of the individual members of the Osage Tribe, according to the roll herein provided, or to their heirs; and said tract shall be conveyed to the said town of Pawhuska by deed, and said deed shall recite and set out in full the conditions under which the above donation and conveyance are made.

§ 1055. Continuation of Osage townsite commission.—That the provisions of an Act entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and six, and for other purposes," approved March third, nineteen hundred and five, relating to the Osage Reservation, pages one thousand and sixty-one and one thousand and sixty-two, volume thirty-three, United States Statutes at Large, be, and the same are hereby, continued in full force and effect.

§ 1056. Reservation of oil, gas, coal and other minerals to the tribe for a period of twenty-five years from April 8, 1906.—[3]. That the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made are hereby reserved to the Osage Tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six; and leases for all oil, gas, and other minerals, covered by selections and division of land herein provided for, may be made by the Osage Tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe: Provided, that the royalties to be paid to the Osage Tribe under any mineral lease so made shall be determined by the President of the United States: And provided further, that no mining of or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the written consent of the Secretary of the Interior: Provided, however, that nothing

herein contained shall be construed as affecting any valid existing lease or contract.

§ 1057. **Moneys due Osages to be held as trust fund.—**
[4]. That all funds belonging to the Osage Tribe, and all moneys due, and all moneys that may become due, or may hereafter be found to be due the said Osage Tribe of Indians, shall be held in trust by the United States for the period of twenty-five years from and after the first day of January, nineteen hundred and seven, except as herein provided:

First. That all the funds of the Osage tribe of Indians, and all the moneys now due or that may hereafter be found to be due to the said Osage Tribe of Indians, and all moneys that may be received from the sale of their lands in Kansas under existing laws, and all moneys found to be due to said Osage Tribe of Indians on claims against the United States, after all proper expenses are paid, shall be segregated as soon after January first, nineteen hundred and seven, as is practicable and placed to the credit of the individual members of the said Osage Tribe on a basis of a pro rata division among the members of said tribe, as shown by the authorized roll of membership as herein provided for, or to their heirs as hereinafter provided, said credit to draw interest as now authorized by law; and the interest that may accrue thereon shall be paid quarterly to the members entitled thereto, except in the case of minors, in which case the interest shall be paid quarterly to the parents until said minor arrives at the age of twenty-one years: Provided, that if the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being misused or squandered he may withhold the payment of such interest: And provided further, that said interest of minors whose parents are deceased shall be paid to their legal guardians, as above provided.

§ 1058. **Royalties to be deposited as credit to Osages.—**
Second. That the royalties received from oil, gas, coal, and

other mineral leases upon the lands for which selection and division are herein provided, and all moneys received from the sale of town lots, together with the buildings thereon, and all moneys received from the sale of the three reservations of one hundred and sixty acres each heretofore reserved for dwelling purposes, and all moneys received from grazing lands, shall be placed in the treasury of the United States to the credit of the members of the Osage Tribe of Indians as other moneys of said tribe are to be deposited under the provisions of this act, and the same shall be distributed to the individual members of said Osage Tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States, except as herein provided.

§ 1059. **Certain amount of royalties reserved for school purposes.**—Third. There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School and for other schools on the Osage Indian Reservation conducted or to be established and conducted for the education of Osage children.

§ 1060. **Royalties—Certain amount reserved for agency purposes.**—Fourth. There shall be set aside and reserved from the royalties received from oil, gas, coal or other mineral leases, and moneys received from the sale of town lots, and rents from grazing lands not to exceed thirty thousand dollars per annum for agency purposes and an emergency fund for the Osage Tribe, which shall be paid out from time to time, upon the requisition of the Osage tribal council, with the approval of the Secretary of the Interior.

§ 1061. **Termination of trust and division of oil and other minerals.**—[5]. That at the expiration of the period of twenty-five years from and after the first day of Jan-

uary, nineteen hundred and seven, the lands, mineral interests, and moneys, herein provided for and held in trust by the United States shall be the absolute property of the individual members of the Osage Tribe, according to the roll herein provided for, or their heirs, as herein provided, and deeds to said lands shall be issued to said members, or to their heirs, as herein provided, and said moneys shall be distributed to said members, or to their heirs, as herein provided, and said members shall have full control of said lands, moneys, and mineral interests, except as hereinbefore provided.

§ 1062. Descent to be controlled by Oklahoma statute with certain exceptions.—[6]. That the lands, moneys, and mineral interests, herein provided for, of any deceased member of the Osage Tribe shall descend to his or her legal heirs, according to the laws of the territory of Oklahoma, or of the state in which said reservation may be hereinafter incorporated, except where the decedent leaves no issue, nor husband nor wife, in which case said lands, moneys, and mineral interests must go to the mother and father equally.

§ 1063. Leasing for farming purposes permitted subject to approval of Secretary of Interior.—[7]. That the lands herein provided for are set aside for the sole use and benefit of the individual members of the tribe entitled thereto, or to their heirs, as herein provided; and said members, or their heirs, shall have the right to use and to lease said lands for farming, grazing, or any other purpose not otherwise specifically provided for herein, and said members shall have full control of the same, including the proceeds thereof: Provided, that parents of minor members of the tribe shall have the control and use of said minors' lands, together with the proceeds of the same, until said minors arrive at their majority: And provided further, that all leases given on said lands for the benefit of the individual members of the tribe entitled thereto, or for their heirs,

shall be subject only to the approval of the Secretary of the Interior.

§ 1064. Deeds to allotted lands to be executed by principal chief and approved by Secretary of the Interior.—[8]. That all deeds to said Osage lands or any part thereof shall be executed by the principal chief for the Osages, but no such deeds shall be valid until approved by the Secretary of the Interior.

§ 1065. Election of tribal officers.—[9]. That there shall be a biennial election of officers for the Osage Tribe as follows: A principal chief, an assistant principal chief, and eight members of the Osage tribal council, to succeed the officers elected in the year nineteen hundred and six, said officers to be elected at a general election to be held in the town of Pawhuska, Oklahoma Territory, on the first Monday in June; and the first election for said officers shall be held on the first Monday in June, nineteen hundred and eight, in the manner to be prescribed by the Commissioner of Indian Affairs, and said officers shall be elected for a period of two years, commencing on the first day of July following said election, and in case of a vacancy in the office of principal chief, by death, resignation, or otherwise, the assistant principal chief shall succeed to said office, and all vacancies in the Osage tribal council shall be filled in a manner to be prescribed by the Osage tribal council, and the Secretary of the Interior is hereby authorized to remove from the council any member or members thereof for good cause, to be by him determined.

§ 1066. Highways along section lines without compensation.—[10]. That public highways or roads, two rods in width, being one rod on each side of all section lines, in the Osage Indian Reservation, may be established without any compensation therefor.

§ 1067. Lands for railroad purposes.—[11]. That all lands taken or condemned by any railroad company in the

Osage Reservation, in pursuance of any act of Congress or regulation of the Department of the Interior, for rights of way, station grounds, side tracks, stock pens and cattle yards, water stations, terminal facilities, and any other railroad purpose, shall be, and are hereby, reserved from selection and allotment and confirmed in such railroad companies for their use and benefit in the construction, operation, and maintenance of their railroads:

§ 1068. **Railway companies not to acquire any right to oils, gas, or other minerals under right of way.**—Provided, that such railroad companies shall not take or acquire hereby any right or title to any oil, gas, or other mineral in any of said lands.

§ 1069. **Secretary of Interior to carry out provisions of allotment act.**—[12]. That all things necessary to carry into effect the provisions of this act not otherwise herein specifically provided for shall be done under the authority and direction of the Secretary of the Interior.

§ 1070. **Act of March 3, 1909, authorizing Secretary to sell surplus lands of the Kansas or Kaw and Osage allottees.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of the Interior be, and he hereby is, authorized and empowered, upon application, to sell, under such rules and regulations as he may prescribe, part or all of the surplus lands of any member of the Kaw or Kansas and the Osage Tribes of Indians in Oklahoma: Provided, that the sales of the Osage lands shall be subject to the reserved rights of the tribe in oil, gas, and other minerals.¹

¹ 35 Stat. 778, c. 256.

CHAPTER 69a

**THE ACT OF APRIL 18, 1912, SUPPLEMENTARY TO AND
AMENDATORY OF THE OSAGE ALLOTMENT
ACT OF JUNE 28, 1906.
(CHAPTER 83, 37 STAT. 86)**

- § 1070a. Secretary authorized to pay taxes.**
- 1070b. Exchange of surplus allotments permitted.**
- 1070c. Property of orphan minors, insane and other incompetent allottees made subject to jurisdiction of county courts.**
- 1070d. Tribal rights in minerals not affected.**
- 1070e. Distribution of tribal funds authorized.**
- 1070f. Partition and sale of inherited lands authorized.**
- 1070g. Involuntary alienation prohibited.**
- 1070h. Adult members authorized to dispose of real estate by will with Secretary's approval.**
- 1070i. Word "competent" defined.**
- 1070j. Osage allotment act amended.**
- 1070k. Repeal of inconsistent provisions.**

§ 1070a. Secretary authorized to pay taxes.—(1). Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That until the inherited lands of the deceased members of the Osage Tribe of Indians shall be partitioned or sold the Secretary of the Interior be, and he hereby is, authorized to pay the taxes on said land out of any money due and payable to the heirs from the segregated decedent's funds in the Treasury of the United States.

§ 1070b. Exchange of surplus allotments permitted.—
(2). That the Secretary of the Interior be, and he hereby is, authorized, where the same would be to the best interests of Osage allottees, and the same is submitted to the Osage council for recommendation and approved by it, to permit the exchange of surplus allotments, or any portions thereof, of Osage allottees under such rules and regulations as he may prescribe and upon such terms as he shall approve. The Secretary shall have authority to do any and all things necessary to make these exchanges effective.

§ 1070c. **Property of orphan minors, insane and other incompetent allottees made subject to jurisdiction of county courts.—(3).** That the property of deceased and of orphan minor, insane, or other incompetent allottees of the Osage Tribe, such incompetency being determined by the laws of the state of Oklahoma, which are hereby extended for such purposes to the allottees of said tribe, shall, in probate matters, be subject to the jurisdiction of the county courts of the state of Oklahoma, but a copy of all papers filed in the county court shall be served on the superintendent of the Osage Agency at the time of filing, and said superintendent is authorized, whenever the interests of the allottee require, to appear in the county court for the protection of the interests of the allottee. The superintendent of the Osage Agency or the Secretary of the Interior, whenever he deems the same necessary, may investigate the conduct of executors, administrators, and guardians or other persons having in charge the estate of any deceased allottee or of minors or persons incompetent under the laws of Oklahoma, and whenever he shall be of opinion that the estate is in any manner being dissipated or wasted or is being permitted to deteriorate in value by reason of the negligence, carelessness, or incompetency of the guardian or other person in charge of the estate, the superintendent of the Osage Agency or the Secretary of the Interior or his representative shall have power, and it shall be his duty, to report said matter to the county court and take the necessary steps to have such case fully investigated, and also to prosecute any remedy, either civil or criminal, as the exigencies of the case and the preservation and protection of the interests of the allottee or his estate may require, the costs and expenses of the civil proceedings to be a charge upon the estate of the allottee or upon the executor, administrator, guardian or other person in charge of the estate of the allottee and his surety, as the county court shall determine. Every bond of the executor, administrator, guardian, or other person in charge of the estate of any Osage allottee shall be subject

to the provisions of this section and shall contain therein a reference hereto: Provided, that no guardian shall be appointed for a minor whose parents are living, unless the estate of said minor is being wasted or misused by such parents: Provided further, that no land shall be sold or alienated under the provisions of this section without the approval of the Secretary of the Interior.

§ 1070d. Tribal rights in minerals not affected.—(4). That nothing herein shall be construed as in any way changing the rights of the Osage Tribe in oil, gas, coal, and other minerals as fixed in the Osage Act of June twenty-eighth, nineteen hundred and six, or in any manner be construed to change or amend the provisions of said Act in regard to oil, gas, coal, or other minerals.

§ 1070e. Distribution of tribal funds authorized.—(5). That the Secretary of the Interior, in his discretion, hereby is authorized, under rules and regulations to be prescribed by him and upon application therefor, to pay to Osage allottees, including the blind, insane, crippled, aged, or helpless, all or part of the funds in the Treasury of the United States to their individual credit: Provided, that he shall be first satisfied of the competency of the allottee or that the release of said individual trust funds would be to the manifest best interests and welfare of the allottee: Provided further, that no trust funds of a minor or a person above mentioned who is incompetent shall be released and paid over except to a guardian of such person duly appointed by the proper court and after the filing by such guardian and approval by the court of a sufficient bond conditioned to faithfully administer the funds released and the avails thereof.

§ 1070f. Partition and sale of inherited lands authorized.—(6). That from and after the approval of this act the lands of deceased Osage allottees, unless the heirs agree to partition the same, may be partitioned or sold upon proper order of any court of competent jurisdiction in accordance

with the laws of the state of Oklahoma: Provided, that no partition or sale of the restricted lands of a deceased Osage allottee shall be valid until approved by the Secretary of the Interior. Where some of the heirs are minors, the said court shall appoint a guardian ad litem for said minors in the matter of said partition, and partition of said land shall be valid when approved by the court and the Secretary of the Interior. When the heirs of such deceased allottees have certificates of competency or are not members of the tribe, the restrictions on alienation are hereby removed. If some of the heirs are competent and others have not certificates of competency, the proceeds of such part of the sale as the competent heirs shall be entitled to shall be paid to them without the intervention of an administrator. The shares due minor heirs, including such minor Indian heirs as may not be tribal members and those Indian heirs not having certificates of competency, shall be paid into the Treasury of the United States and placed to the credit of the Indians upon the same conditions as attach to segregated shares of the Osage national fund, or with the approval of the Secretary of the Interior paid to the duly appointed guardian. The same disposition as herein provided for with reference to the proceeds of inherited lands sold shall be made of the money in the Treasury of the United States to the credit of deceased Osage allottees.

§ 1070g. **Involuntary alienation prohibited.**—(7). That the lands allotted to members of the Osage Tribe shall not in any manner whatsoever be encumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency, or removal of restrictions on alienation; nor shall the lands or funds of Osage tribal members be subject to any claim against the same arising prior to grant of a certificate of competency. That no lands or moneys inherited from Osage allottees shall be subject to or be taken or sold to secure the payment of any indebtedness incurred by such heir prior to

the time such lands and moneys are turned over to such heirs: Provided, however, that inherited moneys shall be liable for funeral expenses and expenses of last illness of deceased Osage allottees, to be paid upon order of the county court of Osage county, state of Oklahoma: Provided further, that nothing herein shall be construed so as to exempt any such property from liability for taxes.

§ 1070h. **Adult members authorized to dispose of real estate by will with secretary's approval.—(8).** That any adult member of the Osage Tribe of Indians not mentally incompetent may dispose of any or all of his estate, real, personal, or mixed, including trust funds, from which restrictions as to alienation have not been removed, by will, in accordance with the laws of the state of Oklahoma: Provided, that no such will shall be admitted to probate or have any validity unless approved before or after the death of the testator by the Secretary of the Interior.

§ 1070i. **Word "competent" defined.—(9).** The word "competent," as used in this act, shall mean a person to whom a certificate has been issued authorizing alienation of all the lands comprising his allotment, except his homestead.

§ 1070j. **Osage allotment act amended.—(10).** That section four, paragraph four, of the Osage Allotment Act, approved June twenty-eighth, nineteen hundred and six, be, and the same hereby is, amended to read as follows:

"Fourth. There shall be set aside and reserved from the royalties received from oil, gas, or other tribal mineral rights or other tribal funds, however arising, not to exceed forty thousand dollars per annum for agency purposes and as an emergency fund, which money shall be paid out from time to time upon the requisition of the Osage tribal council with the approval of the Secretary of the Interior: Provided, that the provision in the Act entitled 'An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations

with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes,' approved June seventh, eighteen hundred and ninety-seven (Thirtieth Statutes at Large, page ninety), limiting the amount of money to be expended for salaries of regular employees at any one agency shall not hereafter apply to the Osage Agency."

§ 1070k. **Repeal of inconsistent provisions.—**(11). That all acts or parts of acts inconsistent herewith be, and the same hereby are, repealed.

CHAPTER 70

OSAGE TOWNSITE ACT, FROM INDIAN APPROPRIATION ACT
OF MARCH 3, 1905

. (CHAPTER 1479, 33 STAT. 1049-1061)

- § 1071. Osage townsite commission created.
- 1072. Reservation of lands for townsites directed.
- 1073. Lots to be appraised.
- 1074. Owners of improvements have preference right to purchase.
- 1075. Reservation for buildings used by licensed traders and others.
- 1076. Reservation for townsite at Fairfax.
- 1077. Reservation for additional townsites on Midland Valley Railroad.

§ 1071. Osage townsite commission created.—That there shall be created an Osage townsite commission consisting of three members, one of whom shall be the United States Indian agent at the Osage Agency, one to be appointed by the Chief Executive of the Osage Tribe and one by the Secretary of the Interior, who shall receive such compensation as the Secretary of the Interior may prescribe to be paid out of the proceeds of the sale of the lots sold under this act.

§ 1072. Reservation of lands for townsites directed.—That the Secretary of the Interior shall reserve from selection and allotment the south half of section four and the north half of section nine, township twenty-five north, range nine east, of the Indian meridian, including the town of Pawhuska, which, except the land occupied by the Indian school buildings, the agency reservoir, the agent's office, the Council building and the residences of agency employees, and a twenty acre tract of land including the Pawhuska cemetery, shall be surveyed, appraised and laid off into lots, blocks, streets and alleys by said townsite commission, under rules and regulations prescribed by the Secretary of the Interior, business lots to be twenty-five feet wide and residence lots fifty feet wide, and sold at public

auction, after due advertisement, to the highest bidder by said townsite commission, under such rules and regulations as may be prescribed by the Secretary of the Interior, and the proceeds of such sale shall be placed to the credit of the Osage Tribe of Indians:

§ 1073. **Lots to be appraised.**—Provided, that said lots shall be appraised at their real value exclusive of improvements thereon or adjacent thereto, and the improvements appraised separately:

§ 1074. **Owners of improvements have preference right to purchase.**—And provided further, that any person, church, school or other association in possession of any of said lots and having permanent improvements thereon, shall have a preference right to purchase the same at the appraised value, but in case the owner of the improvements refuses or neglects to purchase the same, then such lots shall be sold at public auction at not less than the appraised value, the purchaser at such sale to have the right to take possession of the same upon paying the occupant the appraised value of the improvements.

§ 1075. **Reservation for buildings used by licensed traders and others.**—There shall in like manner be reserved from selection and allotment one hundred and sixty acres of land, to conform to the public surveys, including the buildings now used by the licensed traders and others, for a townsite at the town of Hominy;

§ 1076. **Reservation for townsite at Fairfax.**—And the south half of the northwest quarter and the north half of the southwest quarter of section seven, township twenty-four north, range six east, for a townsite at the town of Fairfax, and the northeast corner, section thirteen, township twenty-four, range five east, consisting of ten acres, to be used for cemetery purposes;

§ 1077. **Reservation for additional townsites on Midland Valley Railroad.**—And two townsites of one hundred

and sixty acres each on the line of the Midland Valley Railroad Company adjacent to stations on said line, not less than ten miles from Pawhuska. And the town lots at said towns of Fairfax and Hominy and at said townsites on line of the Midland Valley Railroad shall be surveyed, appraised and sold the same as provided for town lots in the town of Pawhuska.

CHAPTER 71

ALLOTMENT AGREEMENT WITH THE PAWNEES, ENTERED
INTO NOVEMBER 23, 1892, APPROVED MARCH 3, 1893(CHAPTER 209, 27 STAT. 644, 1 KAPP. 496. RECITALS AS TO PARTIES
AND SIGNATURES OMITTED)

- § 1078. Cession of lands to United States.
- 1079. Allotments made by executive order confirmed.
- 1080. Allotments to be controlled by conditions and limitations of General Allotment Act and amendments, where not otherwise provided.
- 1081. Members entitled to allotments.
- 1082. Descent and partition.
- 1083. Lands reserved from allotment.
- 1084. Allotments taken under Act of 1876 confirmed.
- 1085. Annuities.
- 1086. Consideration for cession of lands to United States.
- 1087. Previous agreements not repealed except when in conflict.
- 1088. Effective when ratified by Congress.

Articles of agreement made and entered into by and between David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, Commissioners on the part of the United States, and the Pawnee Tribe of Indians in the Indian Territory.

§ 1078. Cession of lands to United States.—[Art. I]. The Pawnee Tribe of Indians, in the Indian Territory, for the considerations hereinafter set forth, hereby cedes, conveys, releases, relinquishes, and surrenders to the United States all its title, claim, and interest, of every kind and character, in and to the following described reservation in the Indian Territory, to-wit:

All of that tract of country between the Cimarron and Arkansas rivers, embraced within the limits of townships twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24) north, of range four (4) east; townships eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24) north, of range five (5) east; townships eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two

(22), and twenty-three (23) north, of range six (6) east, of the Indian meridian.

§ 1079. Allotments made by executive order confirmed.—[Art. II]. Whereas the President of the United States, by virtue of the authority conferred upon him by law, has directed that the individual members of said tribe of Indians shall take allotments of land in said reservation and hold the titles thereto in severalty; and

Whereas an allotting agent has been appointed to set apart such allotments and is now engaged in the prosecution of that work:

It is agreed that the allotments of land made and to be made under such direction of the President shall in all things be confirmed.

§ 1080. Allotments to be controlled by conditions and limitations of General Allotment Act and amendments where not otherwise provided.—The title to the allotments so made shall in all things, except as herein otherwise expressly provided, be governed by all the conditions and limitations contained in the law of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes," approved February 8, 1887, and an act amendatory thereof, approved February 28, 1891: Provided, however, that said Indians shall be diligent in selecting their said land, and all allotments shall be selected and designated within four months after this agreement shall be ratified by the Congress of the United States, unless the Secretary of the Interior in his discretion shall extend said time: And provided further, such allotments shall be selected by the allottee, himself or herself, when over the age of eighteen years; but for allottees of said tribe under the age of eighteen years the father, if living, but if dead then the mother, shall select such allotment; and if neither father nor mother be living, then such allotment shall be

made by the agent, for the time being, in charge of the affairs of said tribe:

§ 1081. Members entitled to allotments.—Provided further, that all members of said tribe who shall be born prior to the final completion of the allotting of said lands as herein provided for shall have the right to allotments under this agreement, and that allotments made or to be made by said allotting agent shall continue in force and be confirmed even if the allottee shall die before the final completion of such allotting,

§ 1082. Descent and partition.—And in such cases the law of partition and descent of the state or territory wherein such land is situated shall govern:

§ 1083. Lands reserved from allotment.—And provided further, that no allotment shall be taken on land now being used for church or educational purposes, or for public use by the United States, or on sections sixteen (16) and thirty-six (36) in each township, except where the allottee may have heretofore made improvements on said sections, and in that case the allottee may take his or her allotment on such sections, to cover his or her improvements, but according to legal subdivisions:

§ 1084. Allotments taken under Act of 1876 confirmed.—And provided further, that in all cases where members of said tribe have already taken allotments of land in said reservation, in pursuance of and according to the provisions of section 5 of an Act of Congress entitled "An act to authorize the sale of the Pawnee Reservation," approved April 10, 1876, such allotments shall be confirmed, if the allottee shall so elect, and the titles thereto held according to the provisions of this agreement. In such cases, however, the allottee shall have no right to any additional allotment under the law or this agreement.

§ 1085. Annuities.—[Art. III]. It is further agreed that article 2 of the treaty between the United States and

the chiefs and headmen of the four confederate bands of Pawnee Indians, viz. Grand Pawnees, Pawnee Loups, Pawnee Republicans, and Pawnee Tappahs, and generally known as the Pawnee Tribe, proclaimed May 26, 1858, so long as the same shall be in force, is hereby amended so as to read as follows:

“The United States agrees to pay to the Pawnees the sum of thirty thousand dollars per annum, as a perpetual annuity, to be distributed annually among them per capita, in coin, unless the President of the United States shall from time to time otherwise direct. But it is further agreed that the President may, at any time in his discretion, discontinue said perpetuity by causing the value of a fair commutation thereof to be paid to or expended for the benefit of said Indians in such manner as to him shall seem proper.”

§ 1086. Consideration for cession of lands to United States.—[Art. IV]. As an additional and only further consideration for such cession and conveyance, the United States agrees to pay to said tribe the sum of one dollar and twenty-five cents per acre for all the surplus land in said reservation, after the allotments herein provided for shall have been taken and approved by the Secretary of the Interior, payable as follows: Eighty thousand dollars in coin, to be distributed among them per capita at the subagency on said reservation upon the ratification of this agreement by Congress, and the residue of the proceeds of said surplus lands shall be placed to the credit of said tribe in the treasury of the United States, and bear interest at the rate of five per centum per annum, there to remain at the discretion of the United States, the interest to be paid annually and be distributed to said tribe per capita on said reservation.

§ 1087. Previous agreements not repealed except when in conflict.—[Art. V]. This agreement shall not have the effect to repeal, modify, or change any of the treaty stipulations now in force between the United States and said Paw-

nee Tribe of Indians, except in the manner and to the extent herein expressly or by necessary implication provided for.

§ 1088. **Effective when ratified by Congress.—[Art. VI].** This agreement shall become effective when ratified by the Congress of the United States.

CHAPTER 72

AN ACT TO PROVIDE FOR ALLOTMENT OF THE LANDS IN SEVERALTY TO UNITED PEORIAS AND MIAMI IN THE INDIAN TERRITORY, AND FOR OTHER PURPOSES, APPROVED MARCH 2, 1889

(CHAPTER 422, 25 STAT. 1013, 1 KAPP. 344)

- § 1089. General Allotment Act made applicable to lands of Wea, Peoria, Kaskaskia, Piankeshaw, and Western Miami Indians.
1090. Allotments—To whom made.
1091. Settlement of differences.
1092. School, etc., reservation—Sale of school buildings—Buildings for church or school.
1093. Land inalienable for twenty-five years.
1094. Alienation—Restrictions on and tax exemptions.
1095. Allotment to Miami and United Peoria.
1096. Residue to be held in common.
1097. Leases authorized.
1098. Lease of allotments.
1099. Division of unallotted lands after twenty-five years.
1100. Repeal.

An act to provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes.

§ 1089. General Allotment Act made applicable to lands of Wea, Peoria, Kaskaskia, Piankeshaw, and Western Miami Indians.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of chapter one hundred and nineteen of the Acts of eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes," are hereby declared to extend to and are made applicable to the Confederated Wea, Peoria, Kaskaskia, and Piankeshaw Tribes of Indians, and the Western Miami Tribe of Indians, now located in the northeastern part of the Indian Territory and to their reservation, in the same man-

ner and to the same extent as if said tribes had not been excepted from the provisions of said act, except as to section 6 of said act, and as otherwise hereinafter provided.

§ 1090. **Allotments—To whom made.**—That the Secretary of the Interior is hereby authorized and directed, within ninety days from and after the passage of this act, to cause to be allotted to each and every member of the said Confederated Wea, Peoria, Kaskaskia, and Piankeshaw Tribes of Indians, and the Western Miami tribe of Indians, upon lists to be furnished him by the chiefs of said tribes, duly approved by them, and subject to the approval of the Secretary of the Interior, an allotment of land not to exceed two hundred acres, out of their common reserve, to each person entitled thereto by reason of their being members of said tribes by birth or adoption; all allotments to be selected by the Indians, heads of families selecting for their minor children, and the chiefs of their respective tribes for each orphan child.

§ 1091. **Settlement of differences.**—All differences arising between members of said tribes, in making said allotments, shall be settled by the chiefs of the respective tribes, subject to the approval of the Secretary of the Interior:

§ 1092. **School, etc., reservation—Sale of school buildings—Building for church or school.**—Provided, that before any of the allotments herein provided for shall be made, there shall be set apart, not to exceed twenty acres in all, for school, church, and cemetery purposes; the location of the same to be selected by the chiefs of said tribes, subject to the approval of the Secretary of the Interior, in such quantities and at such points as they shall deem best, which, together with all improvements now existing or that may hereafter be made by the tribes thereon, shall be held as common property of the respective tribes. If in making the selections as herein provided for, the sites of present school buildings should not be retained, then all improvements thereon may be removed. If not removed, then they

shall be sold after appraisement by the chiefs of the tribes; the sale to be approved by the Secretary of the Interior and the proceeds placed to the credit of the proper tribe. If any religious denomination, with the consent of either or both of said tribes, should erect any building for church or school purposes upon any of the land selected for church use, the said building, together with the land, shall be held the property of such religious denomination so long as they shall occupy the same for religious or school purposes. And should such denomination at any time desire to move said church or school house to any other place on their reservation, they may do so; or, if they prefer, may sell the same with or without the lands upon which said house is situate, and apply the proceeds to their new building.

§ 1093. **Land inalienable for twenty-five years.**—The land so allotted shall not be subject to alienation for twenty-five years from the date of the issuance of patent therefor, and said lands so allotted and patented shall be exempt from levy, sale, taxation, or forfeiture for a like period of years.

§ 1094. **Alienation—Restrictions on and tax exemptions.**—As soon as all the allotments or selections shall have been made as herein provided, the Secretary of the Interior shall cause a patent to issue to each and every person so entitled, for his or her allotment, and such patent shall recite in the body thereof that the land therein described and conveyed shall not be alienated for twenty-five years from the date of said patent, and shall also recite that such land so allotted and patented is not subject to levy, sale, taxation or forfeiture for a like period of years, and that any contract or agreement to sell or convey such land or allotments so patented entered into before the expiration of said term of years shall be absolutely null and void.¹

¹ *Finley v. Abner*, 4 Ind. T. 386, 69 S. W. 91; *Id.*, 129 Fed. 734, 64 C. C. A. 262; *Buck v. Branson*, 34 Okl. 807, 127 Pac. 436; *United States v. Rundell* (C. C.) 181 Fed. 887; *Bowling v. United States*, 191 Fed. 19, 111 C. C. A. 561.

§ 1095. Allotment to Miami and United Peoria.—[2]. That in making allotments under this act no more in the aggregate than seventeen thousand and eighty-three acres of said reservation shall be allotted to the Miami Indians, nor more than thirty-three thousand two hundred and eighteen acres in the aggregate to the United Peoria Indians; and said amounts shall be treated in making said allotments in all respects as the extent of the reservation of each of said tribes, respectively. If, in making said allotments any difference shall arise between said tribes, all such matters of difference shall be determined by the Secretary of the Interior.

§ 1096. Residue to be held in common.—After the allotments herein provided for shall have been completed, the residue of the lands, if any, not allotted, shall be held in common under present title by said United Peorias and Miamies in the proportion that the residue, if any, of each of the said allotments shall bear to the other.

§ 1097. Leases authorized.—And said United Peorias and Miamies shall have power, subject to the approval of the Secretary of the Interior, to lease for grazing, agricultural, or mining purposes from time to time and for any period not exceeding ten years at any one time, all of said residue, or any part thereof, the proceeds or rental to be divided between said tribes in proportion to their respective interests in said residue.

§ 1098. Lease of allotments.—And after said allotments are completed each allottee may lease or rent his or her individual allotment for any period not exceeding three years, the father acting for his minor children, and in case of no father then the mother, the chief acting for orphans of the tribe to which said orphans may belong.

§ 1099. Division of unallotted lands after twenty-five years.—At the expiration of twenty-five years from the date of the passage of this act, all of said remaining or unal-

lotted lands may be equally divided among the members of said tribes, according to their respective interests, or the same may be sold on such terms and conditions as the President and the adult members of said tribe may hereafter mutually agree upon, and the proceeds thereof divided according to ownership as hereinbefore set forth: Provided, that before any division of the land is made, or sale had, that three-fourths of the bona fide adult members of said tribes shall petition the Secretary of the Interior for such division or sale of said land: Provided further, that sections one and two of this act shall not take effect until the consent thereto of each of said tribes separately shall have been signified by three-fourths of the adult male members thereof, in manner and form satisfactory to the President of the United States.

§ 1100. **Repeal.**—[3]. That any act or part of acts of Congress heretofore passed that may conflict with the provisions of this act, either as to land or money, are hereby repealed.²

² Sections 4 and 5 deal only with the settlement of controversies between the tribes as to division of tribal funds, etc.

CHAPTER 73**ALLOTMENT AGREEMENT WITH THE POTTAWATOMIE
TRIBE, APPROVED BY INDIAN APPROPRIATION
ACT OF MARCH 3, 1891**

(CHAPTER 543, 26 STAT. 1016, 1 KAPP. 409. RECITALS AS TO PARTIES
AND SIGNATURES OMITTED)

- § 1101. Lands ceded.
- 1102. General Allotment Act made applicable.
- 1103. School sections, etc.
- 1104. Sacred Heart Mission.
- 1105. Number of allottees.
- 1106. Payments to tribe for lands relinquished.
- 1107. Agreement ratified.

§ 1101. Lands ceded.—[Art. I]. The Citizen Band of Pottawatomie Indians of the Indian Territory, in consideration of the fulfillment of the promises hereinafter made, hereby cede, relinquish, and forever and absolutely surrender to the United States all their claim, title and interest of every kind and character in and to the following described tract of country in the Indian Territory—according to Morrill's survey, under contract of September third, eighteen hundred and seventy-two—to wit: Beginning at a point on the right bank of the north fork of the Canadian river, in section twenty-one, of township eleven north, range five east, where the western boundary line of the Seminole Reservation strikes said river; thence south with said boundary line to the left bank of the Canadian river; thence up said river along the left bank thereof, to a point on said left bank, in the northeast quarter of section thirty-six, township six north, range one west, thirty-nine chains and eighty-two links (by the meanders of the river west), from the point where the Indian meridian intersects said river, or thirty-eight chains and fifty-two links due west from said Indian meridian; thence north as run by O. T. Morrill, under his contract of September third, eighteen

hundred and seventy-two, to a point on the right bank of the north fork of the Canadian river; thence down said river, along the right bank thereof, to the place of beginning, comprising the following, viz.:

Fractional township five north, ranges one, two, three, four, and five east, north of the Canadian river. Fractional township six north, ranges one, three, four, and five east, north of the Canadian river. Township six north, range two east.

Townships seven, eight, and nine, ranges one, two, three, and four east. Fractional townships seven, eight, and nine north, range five east.

Townships ten and eleven north, range one east. Fractional township ten north, ranges two, three, and four east, south of the north fork of the Canadian river. Fractional township ten north, range five east. Fractional township eleven north, ranges two, three, four, and five east, south of the north fork of the Canadian river. Fractional township twelve north, ranges one and two east, south of North fork of the Canadian river.

Also that portion of sections one, twelve, thirteen, twenty-four, and twenty-five, and section thirty-six, north of the Canadian river in township six north, range one west, lying east of the western boundary line of the said Pottawatomie Reservation as shown by the Morrill survey, and that portion of sections one, twelve, thirteen, twenty-four, twenty-five, and thirty-six, in townships seven, eight, nine, ten, and eleven north, range one west, lying east of the western boundary line aforesaid, and that portion of sections one and twelve south of the north fork of the Canadian river, and sections thirteen, twenty-four, twenty-five, and thirty-six, in township twelve north, range one west, lying east of the western boundary line aforesaid, containing an area of five hundred and seventy-five thousand eight hundred and seventy and forty-two one hundredths acres of land.

§ 1102. **General Allotment Act made applicable.**—[Art. II]. Whereas certain allotments of land have been heretofore made, and are now being made to members of said Citizen Band of Pottawatomie Indians, according to instructions from the Department of the Interior at Washington, under the Act of Congress entitled, "An act to provide for the allotment of lands, in severalty, to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, and according to said instructions other allotments are to be made, it is further agreed that all such allotments so made shall be confirmed—all in process of being made shall be completed and confirmed, and all to be made shall be made under the same rules and regulations, as to persons, location and area, as those heretofore made, and when made shall be confirmed. When said allotments shall be so confirmed, and approved by the Secretary of the Interior, the title in each allottee shall be evidenced and protected in every particular, in the same manner and to the extent provided for in the above-mentioned act of Congress:

§ 1103. **School sections, etc.**—Provided, that in allotments to be hereafter made, no person shall have the right to select his or her allotment in section sixteen and thirty-six in any congressional township—nor upon any land heretofore set apart in said tract of country for any use by the United States, or for school, school farm, or religious purposes—nor shall said sections sixteen and thirty-six be subject to homestead entry but shall be kept and used for school purposes; nor shall any lands set apart for any use of the United States, or for school, school farm or religious purposes, be subject to homestead entry—but shall be held by the United States for such purposes, so long as the United States shall see fit to use them: And provided further, that all such allotments shall be taken on or before

February eighth, eighteen hundred and ninety-one, when any right to allotment, in any one, shall be deemed waived and forever cease to exist.

§ 1104. **Sacred Heart Mission.**—And it is specially agreed that the south half of section seven and the north half of section eighteen in township six north, range five east, heretofore set apart by a written agreement between said Citizen Band of Pottawatomie Indians and certain Catholic Fathers, for religious, school, and farm purposes, shall not be subject to allotment or homestead entry, but shall be held by the United States for the Sacred Heart Mission, the name under which said association of Fathers are conducting the church, school, and farm on said land.

And in any lawful manner, to be provided by Congress, shall be conveyed to said Fathers for the uses above expressed.

§ 1105. **Number of allottees.**—[Art. III]. It is further agreed that the number entitled to take and who shall take allotments, including those who have already taken allotments, is fourteen hundred.

But if it shall be ascertained that a greater number than fourteen hundred shall be entitled to and shall take allotments hereunder, then there shall be deducted from the sum hereinafter agreed, to be paid to said Pottawatomie Indians the sum of one dollar for each acre of land allotted to those in excess of said number.

§ 1106. **Payments to tribe for lands relinquished.**—[Art. IV]. It is further agreed, as a further and only additional consideration for such relinquishment of all title, claim, and interest of every kind and character in [an] and to said lands, that the United States will pay to said Citizen Band of Pottawatomie Indians, in said tract of country, within four months after this agreement shall have been ratified by Congress, the sum of one hundred and sixty thousand dollars for making homes and other improvements on the said allotments. And if it shall be ascertained that said

Citizen Band of Pottawatomie Indians did purchase and pay the United States for the tract of country above described in accordance with the provisions of a treaty between the United States and said Citizen Band of Pottawatomie Indians, proclaimed August seven, eighteen hundred and sixty-eight, and that the United States did retain and yet retains and shall continue to retain of said Indians' funds the sum of one hundred and nineteen thousand seven hundred and ninety dollars and seventy-five cents on account of such purchase, then the United States agrees to pay to said Citizen Band of Pottawatomie Indians the additional sum of one hundred and nineteen thousand seven hundred and ninety dollars and seventy-five cents.

All payments of money herein provided for shall be made per capita to said Indians.

§ 1107. **Agreement ratified.**—[Art. V]. This agreement shall have effect after it shall have been ratified by the Congress of the United States.

CHAPTER 74

ACT PROVIDING FOR ALLOTMENT OF QUAPAW LANDS, FROM
INDIAN APPROPRIATION ACT, APPROVED MARCH 2, 1895

(CHAPTER 188, 28 STAT. 907, 1 KAPP. 566)

§ 1108. Allotments made by National Council accepted.

1109. Inalienable for twenty-five years.

§ 1108. Allotments made by National Council accepted.—That the allotments of land made to the Quapaw Indians, in the Indian Territory, in pursuance of an act of the Quapaw National Council, approved March twenty-third, eighteen hundred and ninety-three, be and the same are hereby ratified and confirmed, subject to revision, correction and approval by the Secretary of the Interior: Provided, however, that any allottee who may be dissatisfied with his allotment shall have all the rights to contest the same provided for in said act of the Quapaw National Council subject to revision, correction, and approval by the Secretary of the Interior. And the Secretary of the Interior is hereby authorized to issue patents to said allottees in accordance therewith.

§ 1109. Inalienable for twenty-five years.—Provided, that said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents: And provided further, that the surplus lands on said reservation, if any, may be allotted from time to time, by said tribe to its members, under the above entitled act.¹

¹ Goodrum v. Buffalo, 162 Fed. 817, 89 C. C. A. 525; United States v. Abrams (C. C.) 181 Fed. 847; United States v. Abrams, 194 Fed. 83, 114 C. C. A. 160; Tidwell v. Dobson (Okl.) 131 Pac. 693.

CHAPTER 75

AN ACT FOR THE REMOVAL OF RESTRICTIONS ON ALIENATION OF LANDS OF ALLOTTEES OF THE QUAPAW AGENCY, OKLAHOMA, ETC., APPROVED MARCH 3, 1909

(CHAPTER 253, 35 STAT. 751)

- § 1110. Secretary authorized to remove restrictions on alienation of allotted lands in Quapaw Agency except homesteads.
1111. Tribal and agency lands, etc., to be sold.
1112. Net proceeds pro rata to Indians.
1113. Patents in fee to religious societies.
1114. Sale of Modoc allotments by Secretary authorized.
1115. Modocs permitted to lease.

§ 1110. Secretary authorized to remove restrictions on alienation of allotted lands in Quapaw Agency except homesteads.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby authorized, upon application of any adult member of either of the tribes of Indians belonging to the Quapaw Indian Agency in the state of Oklahoma, to remove the restrictions on any part of or all of the lands allotted to such applicant, and permit a sale under such terms and conditions as he may deem for the best interests of the applicant, excepting a tract of not less than forty acres, which shall be designated and held as a homestead: Provided, that this section does not apply to the Modocs.

§ 1111. Tribal and agency lands, etc., to be sold.—[2]. That the Secretary of the Interior be, and he is hereby, authorized to sell all or any of the tribal lands within the jurisdiction of the Quapaw Agency, and all agency, school, or other government buildings on any reservation within the jurisdiction of said agency, at public auction or by sealed bids, under such regulations as he may prescribe; and he is hereby authorized to convey all lands so sold to the purchaser thereof by patents in fee. And all lands within

such agency which have heretofore been reserved for agency, school, or other purposes shall, on approval of this act, revert to the tribe within whose reservation the lands are located and be sold as tribal lands as herein provided.

§ 1112. **Net proceeds pro rata to Indians.**—[3]. That after the sale of all such lands as provided herein, the net proceeds of such sale, together with all funds belonging to such tribes from whatever source derived, shall be apportioned and paid pro rata, under direction of the Secretary of the Interior, to the members of each of the respective tribes, in such manner as he shall prescribe.

§ 1113. **Patents in fee to religious societies.**—[4]. That the Secretary of the Interior is hereby authorized and directed to issue patents in fee to all religious societies and organizations, severally, for the lands occupied by them within any of such reservations and heretofore reserved to such societies, as shown on approved schedules of allotments.

§ 1114. **Sale of Modoc allotments by Secretary authorized.**—[5]. That the Secretary of the Interior be, and he is hereby, authorized and directed to restore to the rolls of the Klamath Agency, in Oregon, those Modoc Indians now enrolled at the Quapaw Agency, in Oklahoma, formerly Indian Territory, together with their descendants living at the date of the passage of this act, and that upon the removal of any of said Indians to the Klamath Reservation, in Oregon, they shall be allotted as other Indians on said reservation, and that upon the passage of this act they be accorded all the rights and privileges of other Indians enrolled at the Klamath Agency: Provided, that for the purposes of such removal the Secretary of the Interior be, and he is hereby, upon application of any allottee, authorized to sell, under such rules and regulations as he may prescribe, all lands inherited and otherwise heretofore allotted to the members of said tribe in Oklahoma, and he is authorized to issue a patent in fee simple to the purchaser or

purchasers of said lands, and all restrictions as to the sale, incumbrance, and taxation of said land shall thereupon be removed.

§ 1115. **Modocs permitted to lease.**—Provided further. that if any member of the Modoc Tribe of Indians prefers not to have his or her land sold, such allottee may lease his or her land in Oklahoma for a period of not to exceed five years, the parent or next of kin having the care and custody of any minor executing the lease for such minor.

CHAPTER 76

ALLOTMENT AGREEMENT WITH THE SAC AND FOX NATION, APPROVED FEBRUARY 13, 1891

(CHAPTER 165, 26 STAT. 749, 1 KAPP. 387. RECITALS AS TO PARTIES
AND SIGNATURES OMITTED)

§ 1116-23. Cession to the United States of certain lands in Indian Territory by Sac and Fox Nation.

- 1124. Agency quarter section excepted from cession and reserved from allotment.
- 1125. Sac and Fox may sell agency quarter section.
- 1126. Rights of Sac and Fox to select lands in severalty.
- 1127. Patents for allotments.
- 1128. Patents in trust.
- 1129. Patents in fee.
- 1130. Orphan allottees.
- 1131. Additional consideration.
- 1132. Allotting agents and assistants.
- 1133. Preferred rights of owners of improvements.
- 1134. Limitation of beneficiaries.
- 1135. Operation of agreement.

§ 1116-23. Cession to the United States of certain lands in Indian Territory by Sac and Fox Nation.¹—[Art. I]. The said the Sac and Fox Nation hereby cedes, conveys, transfers, surrenders and forever relinquishes to the United States of America, all their title, claim or interest, of every kind or character, in and to the following described tract of land or country, in the Indian Territory, to-wit: Beginning at a point on the left bank of the North fork of the Canadian river, where the west boundary line of the Creek Reservation crosses the same; thence north with said west boundary line to the right bank of the Cimarron river; thence up the said Cimarron river along the right bank thereof to a point on said right bank of said river, where the section line between sections nineteen and twenty (20) of township eighteen (18) north, of range four

¹ On account of eliminating certain sections erroneously inserted here, sections 1116 to 1123, inclusive, are consolidated as one section.

(4) east of the Indian meridian strikes the same; thence south on the section line between sections nineteen (19) and twenty (20) twenty-nine (29) and thirty (30) thirty-one (31) and thirty-two (32), of said township eighteen (18), and between sections five (5) and six (6), seven (7) and eight (8) seventeen (17) and eighteen (18) nineteen (19) and twenty (20) twenty-nine (29) and thirty (30) thirty-one (31) and thirty-two (32) of townships seventeen (17), sixteen (16) fifteen (15), fourteen (14) north, and between sections five (5) and six (6) seven (7) and eight (8) and sections seventeen (17) and eighteen (18) of township thirteen (13) north, all in range four (4) east of the Indian meridian, to the southeast corner of section eighteen (18) in said township thirteen (13); thence west on the section line between sections eighteen (18) and nineteen (19), to the range line between ranges three (3) and four (4), east of said Indian meridian, thence south on said range line to a point on the left bank of the North fork of the Canadian river, where the said range line strikes the said river; thence down the said North fork of the Canadian river, along the left bank thereof to the place of beginning:

Also the tract of land situated in township ten (10) north of range four (4) east of said Indian meridian, north of the North fork of the Canadian river, (not within the limits of the tract of country above described), and bounded as follows:

Beginning at the point on the left bank of the North fork of the Canadian river where the range line between the ranges three (3) and four (4) east strikes the said river; thence up said river along the left bank thereof to a point on said left bank where the said range line again intersects said river; thence south on said range line to a point on the left bank of said river where said range line again intersects said river; thence down said river along the left bank thereof to the place of beginning—and all other land or country in Indian Territory, in which said Sac and Fox Nation has or claims any title, claim or interest.

§ 1124. Agency quarter section excepted from cession and reserved from allotment.—Provided however the quarter section of land on which is now located the Sac and Fox Agency shall not pass to the United States by this cession, conveyance, transfer, surrender and relinquishment, but shall remain the property of said Sac and Fox Nation, to the full extent that it is now the property of said Nation—subject only to the rights of the United States therein, by reason of said agency being located thereon, and subject to the rights, legal and equitable, of those persons that are now legally located thereon.

§ 1125. Sac and Fox may sell agency quarter section.—And it is agreed that the National Council of the said Sac and Fox Nation shall have the right at any time, subject to the approval of the Secretary of the Interior for the time being, to sell and convey said quarter section of land, or any part thereof, saving in such conveyance the rights of the United States and of persons legally located thereon—for the benefit of said Sac and Fox Nation, but shall not be subject to be taken by any citizen of the Sac and Fox Nation, in allotment, nor subject to homestead entry under any law of the United States. And the section of land now designated and set apart near the Sac and Fox Agency, for a school and farm, shall not be subject either to allotment to an Indian or to homestead entry under the laws of the United States—but shall remain as it now is and kept for school and farming purposes, so long as said Sac and Fox Nation shall so use the same,—Provided however, that at the time allotments are being taken, as hereinafter provided for, the National Council of said Sac and Fox Nation may release from the operation of this part of the agreement one or more quarters of said school section of land and such part or parts so released, shall thereby become subject to allotment hereunder, or to homestead entry. And for each quarter of said school section so released, the said National Council shall have the right to select anywhere in

said reservation another quarter section of land, except in section sixteen (16) and section thirty-six (36) of any congressional township—to be held as said school section is provided herein to be held,—so long as said Sac and Fox Nation shall use the same for school purposes or for farming purposes in connection with this said school.

§ 1126. **Rights of Sac and Fox to select lands in severalty.**—[Art. II]. In consideration of the cession, conveyance, transfer, surrender and relinquishment by said Sac and Fox Nation of all of their title, claim and interest, of every kind and character in and to the lands described in the preceding article, the United States of America hereby agrees with said Sac and Fox Nation that each and every citizen thereof over the age of eighteen (18) years shall have the right to select for himself one-fourth of a section of land in one body, in a square form, to conform in boundaries to the legal surveys, anywhere in the tract of country hereinbefore described, except in sections sixteen (16) and thirty-six (36) in each congressional township and said one quarter section of land where said agency is located and said school section or other lands selected in lieu thereof.

The father of any child, or if the father be dead, the mother, shall have the right to select for each of his or her children, under eighteen (18) years of age, one quarter section of land, in one body, in a square form, under the same restrictions, only as above provided for citizens over the age of eighteen (18) years. If there shall be a child under eighteen (18) years of age, and having neither father nor mother, then the agent for the time being, at said Sac and Fox Agency, shall select for such child the same amount of land, under the same restrictions and limitations, as are above provided for other children.

§ 1127. **Patents for allotments.**—[Art. III]. It is further agreed that when the allotments to the citizens of the Sac and Fox Nation are made, the Secretary of the Interior

shall cause patents to issue therefor in the name of the allottees which patent shall be of the legal effect and declare that eighty (80) acres of land to be designated and described by the allottee, his or her agent as above provided, at the time the allotment is being made, shall be held in trust by the United States of America, for the period of twenty-five years, for the sole use and benefit of the allottee, or his or her heirs, according to the laws of the state or territory where the land is located;

§ 1128. **Patents in trust.**—And that the other eighty (80) acres shall be so held in trust by the United States of America for the period of five (5) years, or if the President of the United States will consent, for fifteen (15) years for like use and benefit; and that at the expiration of the said periods respectively the United States will convey the same by patent to said allottee, or his or her heirs as aforesaid, in fee, discharged of said trust and free from all incumbrances;

§ 1129. **Patents in fee.**—Provided, that in no case shall a patent in fee be issued to a person who is an orphan at time allotment is made and un-married, until he or she shall have arrived at the age of twenty-one (21) years or shall marry.

§ 1130. **Orphan allottees.**—In order that the question of the age of any orphan allottee as aforesaid shall not be subject to future inquiry, it is agreed that the age of each orphan allottee, under the age of twenty-one (21) years shall be fixed and ascertained by the person making the allotment and reported by him to the Department of the Interior and such report of the age of any allottee shall be held and deemed conclusive in carrying out this agreement.

§ 1131. **Additional consideration.**—[Art. IV]. As a further and only additional consideration for the cession, conveyance, transfer, surrender and relinquishment of all title, claim and interest in and to the tract of land described in article I hereof, the United States agrees to pay the

Sac and Fox Nation, the sum of four hundred and eighty-five thousand (\$485,000) dollars: Provided, the entire number of allotments hereunder shall not exceed five hundred and twenty-eight (528) and should the allotments exceed in number five hundred and twenty-eight (528) then there shall be deducted from said sum of four hundred and eighty-five thousand (\$485,000) dollars, the sum of two hundred (\$200) dollars for each allotment in excess of said number.

Said sum of four hundred and eighty-five thousand (\$485,000) dollars shall be paid as follows: Three hundred thousand dollars thereof shall be retained in the treasury of the United States to the credit of the said Sac and Fox Nation, and bear interest at the rate of five per centum (5%) per annum—which interest shall become due and payable on the first day of March in each year.

Five thousand (\$5,000) dollars thereof shall be paid to the United States Indian agent at the Sac and Fox Agency, to be paid out and expended by him under the direction and authority of the National Council of the Sac and Fox Nation.

The residue of said sum of four hundred and eighty-five thousand dollars shall be paid out in currency to the citizens of the said Sac and Fox Nation, per capita, at the Sac and Fox Agency in the Indian Territory, within three months after the ratification of this agreement by Congress, as follows: Each person over the age of twenty-one years shall receive and receipt for his or her share thereof; each person that is married shall receive and receipt for his or her share thereof whether twenty-one years of age or not.

The United States Indian agent at the Sac and Fox Agency shall retain and pay out the share thereof, belonging to any insane or imbecile citizen of said nation, for his or her sole use and benefit, either for necessary support or for the improvement of his or her land; the share thereof belonging to orphan children under twenty-one years of age and

un-married, shall be retained in the treasury of the United States, until he or she shall marry or become twenty-one years of age, when he or she shall be entitled to receive and receipt for the same at said Sac and Fox Agency, free of charge; or if the National Council shall at any time deem any orphan child capable of taking proper care of his or her money, said council may make an order to that effect, upon which order being made the United States Indian agent at said Sac and Fox Agency shall make requisition for such person's money, which at the ensuing annuity payment shall be paid to such person. It is the purpose and intention and agreement that no part of this fund shall ever pass under the control of any guardian appointed by or acting under any state or territorial authority.

It is further agreed that no part of said sum of four hundred and eighty-five thousand dollars shall be applied in payment of any claim preferred against said Sac and Fox Nation, alleged to have accrued prior to the ratification of this agreement.

§ 1132. Allotting agents and assistants.—[Art. V]. It is further agreed that the Department of the Interior, shall, as soon as practicable, after the ratification of this agreement by the Congress of the United States, send to said Sac and Fox Agency a competent corps of allotting agents and necessary assistants, to make, survey, designate and describe, the allotments herein provided for—who shall give a notice in writing to the Principal Chief of the Sac and Fox Nation, that they are prepared and ready to proceed in making such allotments—and said Sacs and Foxes shall then have four months from the time of giving such notice to complete the taking of their allotments, and if, at the end of such period of four months, it shall be ascertained that any of the citizens of said nation, have failed or refused to take their said allotments, then, the United States Indian agent, for the time being, at said Sac and Fox Agency, shall make selections for such persons, which shall have

the same effect, as if such persons had made such selections for themselves. It is further agreed that as soon as such allotments are so made, and approved by the Department of the Interior, and the provisional patents hereinbefore provided for are issued, then the residue of said tract of country, shall, as far as said Sac and Fox Nation is concerned, become public lands of the United States, and under such restrictions as may be imposed by law, be subject to white settlement.

§ 1133. **Preferred rights of owners of improvements.**—[Art. VI]. It is further agreed that whenever any citizen of said Sac and Fox Nation shall have made and owns valuable improvements on any lands in said reservation, he or she shall have the preference over any other citizen of said nation to take his or her allotments so as to embrace said improvements, provided they shall be limited as hereinbefore provided as to boundaries and area.

§ 1134. **Limitation of beneficiaries.**—[Art. VII]. It is further agreed that the beneficiaries of this agreement shall be limited to those persons whose names are now on the roll as Sacs and Foxes at the said Sac and Fox Agency; and those that may be born to them, and entitled by the laws and customs of said Sac and Fox Nation to go upon said roll before said allotments are made; and those that may be adopted into said nation according to law by the National Council, before said allotments are made.

§ 1135. **Operation of agreement.**—[Art. VIII]. This agreement shall be in force and have effect from and after its ratification by the National Council of the Sac and Fox Nation and the Congress of the United States.

CHAPTER 77

ALLOTMENT AGREEMENT MADE WITH THE TONKAWAS OF
OCTOBER 21, 1891, RATIFIED BY ACT OF
CONGRESS MARCH 3, 1893(CHAPTER 209, 27 STAT. 643, 1 KAPP. 495. RECITALS AS TO PARTIES
AND SIGNATURES OMITTED)

- § 1136. Cession of certain lands to United States.
1137. Allotments to be governed by conditions and limitations of
general allotment act and amendments.
1138. Schedule of lands previously allotted.
1139. Providing allotments to children born prior to ratification.
1140. Allotment rights extended to other resident Indians.
1141. Consideration for relinquishment.
1142. Effective when ratified by Congress.

§ 1136. Cession of certain lands to United States.—[Art. I]. The said Tonkawa Tribe of Indians in the Indian Territory for the consideration hereinafter recited, hereby cede, convey, and forever relinquish to the United States all their right, title, claim, and interest of every kind and character in and to the following described tract of country in said Indian Territory, to wit: Township twenty-five (25) north of range one (1) west; township twenty-six (26) north of range one (1) west; township twenty-five (25) north of range two (2) west, and township twenty-six (26) north of range two (2) west, containing ninety thousand seven hundred and ten and eighty-nine hundredths (90,710.-89) acres, more or less, which is the same tract of country conveyed by the Cherokee Nation to the United States, in trust for the use and benefit of the Nez Percés Tribe of Indians by deed dated June 14, 1883, under the provisions of the Act of Congress of March 3d, 1883.

§ 1137. Allotments to be governed by conditions and limitations of General Allotment Act and amendments.—[Art. II]. The allotments of land to said Tonkawa Tribe of Indians, made and completed by Miss Helen P. Clark, an allotting agent duly appointed for the purpose, during

the summer of the year 1891, shall be confirmed to said Indians, respectively, and governed by all the conditions, qualifications, and limitations recited in a certain Act of Congress entitled "An act to provide for the allotment of lands in severalty to the Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes," approved February 8, 1887, and an act amendatory thereof approved February 28, 1891: Provided, that in all cases where the allottee has died since said allotting agent set off and scheduled land to such person the law of descent and partition in force in Oklahoma Territory shall apply thereto, any existing law to the contrary notwithstanding.

§ 1138. Schedule of lands previously allotted.—[Art. III]. For greater particularity and certainty of description a copy of the schedule of lands allotted by said Miss Helen P. Clark is hereto attached, marked Exhibit A, and made a part hereof.

§ 1139. Providing allotments to children born prior to ratification.—[Art. IV]. It is hereby further agreed that in addition to the allotments of land above stated there shall be allotted a like quantity of land to any member of said tribe who may hereafter be born and shall be living at the date of the ratification of this contract by Congress; and any such allotment shall be governed by the law of descent and partition mentioned in article II hereof.

§ 1140. Allotment rights extended to other resident Indians.—[Art. V]. Indians who by nativity belong to other tribes, but who have abandoned such other tribes, and have been adopted by and are now living with and recognized as members of said tribe by said Tonkawa Tribe of Indians, shall have all the rights under this agreement provided for members of said tribe by nativity, and all payments of money provided for herein shall be made, as

nearly as practicable, per capita to all members of said tribe, native and adopted.

§ 1141. **Consideration for relinquishment.**—[Art. VI]. As a further and only additional consideration for such cession, conveyance, and relinquishment, the United States agrees to pay to said tribe of Indians the sum of thirty thousand and six hundred (\$30,600.00) dollars, in manner as follows: Twenty-five (\$25) dollars to be paid in cash to each member of said tribe within sixty days after this contract shall be ratified by Congress; fifty (\$50) dollars to be paid out for each member of said tribe, under the direction of the Commissioner of Indian Affairs, within six months after this contract shall be ratified by Congress, and the residue of said sum of thirty thousand and six hundred (\$30,600.00) dollars shall be retained in the treasury of the United States, and bear interest at the rate of five per centum interest per annum, payable annually to said Indians per capita, or, in the discretion of the Commissioner of Indian Affairs, paid out by him for the use of said Indians, but as nearly as may be per capita.

§ 1142. **Effective when ratified by Congress.**—[Art. VII]. This contract shall have effect when ratified by the Congress of the United States.

CHAPTER 78

ALLOTMENT AGREEMENT MADE WITH THE WICHITA AND
AFFILIATED BANDS JUNE 4, 1891, AND APPROVED
BY CONGRESS MARCH 2, 1895

(CHAPTER 188, 28 STAT. 895, 1 KAPP. 560. RECITALS AS TO PARTIES
AND SIGNATURES OMITTED)

- § 1143. Lands ceded.
- 1144. Reservation of lands for allotment to members of tribe.
- 1145. Allotment of lands to Indians.
- 1146. Selection of lands.
- 1147. Titles to be held in trust.
- 1148. Cash payment.
- 1149. Claims not impaired.
- 1150. Lands for religious, etc., uses.
- 1151. Ratification.

§ 1143. Lands ceded.—[Art. I]. The said Wichita and affiliated bands of Indians in the Indian Territory hereby cede, convey, transfer, relinquish, forever and absolutely, without any reservation whatever, all their claim, title and interest of every kind and character in and to the lands embraced in the following described tract of country in the Indian Territory, to wit:

Commencing at a point in the middle of the main channel of the Washita river, where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of 98 degrees 40 minutes west longitude, thence on said line of 98 degrees 40 minutes due north to the middle of the channel of the main Canadian river, thence down the middle of said main Canadian river to where it crosses the ninety-eighth meridian, thence due south to the place of beginning.

§ 1144. Reservation of lands for allotment to members of tribe.—In consideration of the cession recited in the foregoing article, the United States agrees that out of said tract of country there shall be allotted to each and every

member of said Wichita and affiliated bands of Indians in the Indian Territory, native and adopted, one hundred and sixty acres of land, in the manner and form as follows:

§ 1145. **Allotment of lands to Indians.**—Said tract of country shall be, by the United States, classified into grazing and grain-growing land, and when so classified each of said Indians shall be required to take at least one-half in area of his or her allotment in grazing land, subject to the foregoing and other restrictions hereinafter recited. Each and every member of said Wichita and affiliated bands of Indians in the Indian Territory over the age of eighteen years shall have the right to select for himself or herself one hundred and sixty acres of land, to be held and owned in severalty, but to conform to legal surveys in boundary as nearly as practicable; and that the father, or if he be dead the mother (if members of said tribe or bands of Indians), shall have the right to select a like amount of land, under the same restrictions, for each of his or her children under the age of eighteen years; and that the Commissioner of Indian Affairs, or some one appointed by him for the purpose, shall select a like amount of land, under the same restrictions, for each orphan child belonging to said tribe or bands of Indians under the age of eighteen years.

It is hereby further expressly agreed that no person shall have the right to make his or her selection of land in any part of said tract of country that is now used or occupied, or that has been or may hereafter be set apart for military, agency, school, school farm, religious, townsite, or other public uses, or in sections sixteen (16) and thirty-six (36) in each congressional township, except, in cases where any member of said Wichita and affiliated bands of Indians has heretofore made improvements upon and now occupies and uses a part of said section sixteen (16) and thirty-six (36), such Indian may make his or her selection, according to the legal subdivisions, so as to include his or her im-

provements. It is further agreed that wherever in said tract of country any one of said Indians has made improvements and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection, to conform to legal subdivisions, however, so as to include such improvements, without reference to the classification of land hereinbefore recited.

§ 1146. **Selection of lands.**—[Art. III]. All allotments hereunder shall be selected within ninety days from the ratification of this agreement by Congress of the United States; provided, the Secretary of the Interior, in his discretion, may extend the time for making such selection; and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in such time, then the allotting agent in charge of the work of making such allotments shall, within the next thirty (30) days after said time, make allotments to such Indians, which shall have the same force and effect as if the selections were made by the Indians themselves.

§ 1147. **Titles to be held in trust.**—[Art. IV]. When said allotments of land shall have been selected and taken as aforesaid, and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for a period of twenty-five (25) years, in the manner and to the extent provided for in the Act of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes," approved February 8, 1887. And at the expiration of twenty-five (25) years the title thereto shall be conveyed in fee simple to the allottees, or their heirs, free from all incumbrances.

§ 1148. **Cash payment.**—[Art. V]. In addition to the allotments above provided for, and the other benefits to be

received under the preceding articles, said Wichita and affiliated bands of Indians claim and insist that further compensation, in money, should be made to them by the United States, for their possessory right in and to the lands above described in excess of so much thereof as may be required for their said allotments. Therefore it is further agreed that the question as to what sum of money, if any, shall be paid to said Indians for such surplus lands shall be submitted to the Congress of the United States, the decision of Congress thereon to be final and binding upon said Indians; provided, if any sum of money shall be allowed by Congress for surplus lands, it shall be subject to a reduction for each allotment of land that may be taken in excess of one thousand and sixty (1,060) at that price per acre, if any, that may be allowed by Congress.

§ 1149. **Claims not impaired.**—[Art. VI]. It is further agreed that there shall be reserved to said Indians the right to prefer against the United States any and every claim that they may believe they have the right to prefer, save and except any claim to the tract of country described in the first article of this agreement.

§ 1150. **Lands for religious, etc., uses.**—[Art. VII]. It is hereby further agreed that wherever, in this reservation, any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians the land so occupied may be allotted and confirmed to such society or organization; not, however, to exceed one hundred and sixty (160) acres of land to any one society or organization, so long as the same shall be so occupied and used, and such land shall not be subject to homestead entry. That whenever said lands are abandoned for school purposes the same shall revert to said Indian tribes and be disposed of for their benefit.

§ 1151. **Ratification.** — [Art. VIII]. This agreement shall have effect whenever it shall be ratified by the Congress of the United States.

In witness whereof, the said commissioners on the part of the United States have hereunto set their hands, and the undersigned members of the said Wichita and affiliated band of Indians have set their hands, the day and year first above written.

That said agreement be and the same is accepted, ratified, and conformed as herein provided.

CHAPTER 79

EASEMENTS IN INDIAN LANDS FOR RAILWAY PURPOSES¹

- § 1152. General grant of right of way to railways through the Indian Territory.
1153. Grant for right of way, stations, yards, water supply, changes, etc.
1154. Lands for railway purposes, how acquired—Compensation to individuals for damages, etc.
1155. Annual rental to tribes—Regulation of freight charges and the carrying of mail.
1156. Crossing of one railway company by another—Procedure for acquiring right to.
1157. Automatic signals and safety appliances.
1158. Notice of intent to use automatic signals and division of cost of construction and maintenance.
1159. Mortgages.
1160. Amendment—Right to revise.
1161. Any railway company accepting benefits of act subject to all burdens imposed thereby.
1162. Conditional repeal of previous act.
- 1162a. Secretary authorized to grant railway companies additional lands through Indian reservations.

§ 1152 [13]. General grant of right of way to railways through the Indian territory.—That the right to locate, construct, own, equip, operate, use, and maintain a railway and telegraph and telephone line or lines into, in, or through the Indian Territory, together with the right to take and condemn lands for right of way, depot grounds, terminals, and other railway purposes, in or through any lands held by any Indian tribe or nation, person, individual, or municipality in said territory, or in or through any lands in said territory which have been or may hereafter be allotted in

¹ Chapter 79 is a reproduction of sections 13 to 23, inclusive, of the Act of February 28, 1902, chapter 134, 32 Stat. 43, entitled "An act to grant the right of way through the Oklahoma Territory and the Indian Territory to the Enid & Anadarko Railroad Company, and for other purposes."

The first twelve sections of this act grant a right of way to the Enid & Anadarko Railway Company, and have no application to the general grant for railway purposes found in sections 13 to 23, and are, therefore, not reproduced.

severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee, with full power of alienation, is hereby granted to any railway company organized under the laws of the United States, or of any state or territory, which shall comply with this act.²

§ 1153 [14]. Grant for right of way, stations, yards, water supply, changes, etc.—That the right of way of any railway company shall not exceed one hundred feet in width except where there are heavy cuts and fills, when one hundred feet additional may be taken on each side of said right of way; but lands additional and adjacent to said right of way may be taken and condemned by any railway company for station grounds, buildings, depots, side tracks, turnouts, or other railroad purposes not exceeding two hundred feet in width by a length of two thousand feet. That additional lands not exceeding forty acres at any one place may be taken by any railway company when necessary for yards, roundhouses, turntables, machine shops, water stations, and other railroad purposes. And when necessary for a good and sufficient water supply in the operation of any railroad, any such railway company shall have the right to take and condemn additional lands for reservoirs for water stations, and for such purposes shall have the right to impound surface water or build dams across any creek, draw, canyon, or stream, and shall have the right to connect the same by pipe line with the railroad and take the necessary grounds for such purposes; and any railway company shall have the right to change or straighten its line, reduce its grades or curves, and locate new stations and to take the lands and right of way necessary therefor under the provisions of this act.

§ 1154. [15]. Lands for railway purposes, how acquired—Compensation to individuals for damages, etc.—That

² Choctaw, O. G. Ry. Co. v. Bond, 6 Ind. T. 515, 98 S. W. 335.

before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in the preceding section, full compensation for such right of way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the individual owner, occupant, or allottee of such lands, and to the tribe or nation through or in which the same is situated: Provided, that correct maps of the said line of railroad in sections of twenty-five miles each, and of any lands taken under this act, shall be filed in the Department of the Interior, and shall also be filed with the United States Indian agent for Indian Territory, and with the principal chief or governor of any tribe or nation through which the lines of railroad may be located or in which said lines are situated.

In case of the failure of any railway company to make amicable settlement with any individual owner, occupant, allottee, tribe, or nation for any right of way or lands or improvements sought to be appropriated or condemned under this act, all compensation and damages to be paid to the dissenting individual owner, occupant, allottee, tribe, or nation by reason of the appropriation and condemnation of said right of way, lands, or improvements shall be determined by the appraisement of three disinterested referees, to be appointed by the judge of the United States court, or other court of jurisdiction in the district where such lands are situated, on application of the corporation or other person or party in interest. Such referees, before entering upon the duties of their appointment, shall each take and subscribe, before competent authority, an oath that he will faithfully and impartially discharge the duties of his appointment, which oaths, duly certified, shall be returned with the award of the referees to the clerk of the court by which they were appointed. The referees shall also find in their report the names of the person and persons, tribe, or nation to whom the damages are payable and the in-

• terest of each person, tribe, or nation in the award of damages. Before such referees shall proceed with the assessment of damages for any right of way or other lands condemned under this act, twenty days' notice of the time when the same shall be condemned shall be given to all persons interested, by publication in some newspaper in general circulation nearest said property in the district where said right of way or said lands are situated, or by ten days' personal notice to each person owning or having any interest in said lands or right of way: Provided, that such notice to any tribe or nation may be served on the principal chief or governor of the tribe. If the referees cannot agree, then any two of them are authorized to and shall make the award. Any party to the proceedings, who is dissatisfied with the award of the referees shall have the right, within ten days after the making of the award, to appeal, by original petition, to the United States court, or other court of competent jurisdiction, sitting at the place nearest and most convenient to the property sought to be taken, where the question of the damages occasioned by the taking of the lands in controversy shall be tried de novo, and the judgment rendered by the court shall be final and conclusive, subject, however, to appeal as in other cases.

When the award of damages is filed with the clerk of the court by the referees, the railway company shall deposit the amount of such award with the clerk of the court, to abide the judgment thereof, and shall then have the right to enter upon and take possession of the property sought to be condemned: Provided, that when the said railway company is not satisfied with the award, it shall have the right, before commencing construction, to abandon any portion of said right of way and adopt a new location, subject, however, as to such new location, to all the provisions of this act. Each of the referees shall receive for his compensation the sum of four dollars per day while actually engaged in the appraisement of the property and the hearing of any mat-

ter submitted to them under this act. Witnesses shall receive the fees and mileage allowed by law to witness in courts of record within the districts where such lands are located. Costs, including compensation of the referees, shall be made part of the award or judgment and be paid by the railway company: Provided, that if any party or person other than the railway company shall appeal from any award, and the judgment of the court does not award such appealing party or person more than the referees awarded, all costs occasioned by such appeal shall be paid by such appealing party or person.

§ 1155 [16]. **Annual rental to tribes—Regulation of freight charges and the carrying of mail.**—That where a railroad is constructed under the provisions of this act there shall be paid by the railway company to the Secretary of the Interior, for the benefit of the particular tribe or nation through whose lands any such railroad may be constructed, an annual charge of fifteen dollars per mile for each mile of road constructed, the same to be paid so long as said lands shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise provided herein; and the grants herein are made upon the condition that Congress hereby reserves the right to regulate the charges for freight and passengers on said railways and messages on all telegraph and telephone lines until a state government or governments shall exist in said territory within the limits of which any railway shall be located; and then such state government or governments shall be authorized to fix and regulate the cost of transportation of persons and freights within their respective limits by such railways; but Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railways whenever such transportation shall extend from one state into another, or shall extend into more than one state; and that the railway companies shall carry the mail at such prices as Con-

gress may by law provide; and until such rate is fixed by law the Postmaster General may fix the rate of compensation.

§ 1156 [17]. **Crossing of one railway company by another—Procedure for acquiring right to.**—That any railway company authorized to construct, own, or operate a railroad in said territory desiring to cross or unite its tracks with any other railroad upon the grounds of such other railway company shall, after fifteen days' notice in writing to such other railroad company, make application in writing to the judge of the United States court for the district in which it is proposed to make such crossing or connection for the appointment of three disinterested referees to determine the necessity, place, manner, and time of such crossing or connection. The provisions of section three of this act with respect to the condemnation of right of way through tribal or individual lands shall, except as in this section otherwise provided, apply to proceedings to acquire the right to cross or connect with another railroad. Upon the hearing of any such application to cross or connect with any other railroad, either party or the referees may call and examine witnesses in regard to the matter, and said referees shall have the same power to administer oaths to witnesses that is now possessed by United States commissioners in said territory, and said referees shall, after such hearing and a personal examination of the locality where a crossing or connection is desired, determine whether there is a necessity for such crossing or not, and if so, the place thereof, whether it shall be over or under the existing railroad, or at grade, and in other respects the manner of such crossing and the terms upon which the same shall be made and maintained: Provided, that no crossing shall be made through the yards or over the switches or side tracks of any existing railroad if a crossing can be effected at any other place that is practicable. If either party shall be dissatisfied with the terms of the order made by said ref-

erees it may appeal to the United States court of the Indian Territory for the district wherein such crossing or connection is sought to be made, in the same manner as appeals are allowed from a judgment of a United States commissioner to said court, and said appeal and all subsequent proceedings shall only affect the amount of compensation, if any, and other terms of crossing fixed by said referees, but shall not delay the making of said crossing or connection: Provided, that the corporation desiring such crossing or connection shall deposit with the clerk of the court the amount of compensation, if any is fixed by said referees, and shall execute and file with said clerk a bond of sufficient security, to be approved by the court or a judge thereof in vacation, to pay all damages and comply with all terms that may be adjudged by the court. Any railway company which shall violate or evade any of the provisions of this section shall forfeit for every such offense, to the person, company, or corporation injured thereby, three times the actual damages sustained by the party aggrieved.

§ 1157 [18]. Automatic signals and safety appliances.—That when in any case two or more railroads crossing each other at a common grade shall, by a system of interlocking or automatic signals, or by any works or fixtures to be erected by them, render it safe for engines and trains to pass over such crossing without stopping, and such interlocking or automatic signals or works or fixtures shall be approved by the Interstate Commerce Commissioners, then, in that case, it is hereby made lawful for the engines and trains of such railroad or railroads to pass over such crossing without stopping, any law or the provisions of any law to the contrary notwithstanding; and when two or more railroads cross each other at a common grade, either of such roads may apply to the Interstate Commerce Commissioners for permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures rendering it safe for engines and

trains to pass over such crossings without stopping, and it shall be the duty of said Interstate Commerce Commissioners, if the system of works and fixtures which it is proposed to erect by said company are, in the opinion of the Commission, sufficient and proper, to grant such permission.

§ 1158 [19]. Notice of intent to use automatic signals and division of cost of construction and maintenance.—That any railroad company which has obtained permission to introduce a system of interlocking or automatic signals at its crossing at a common grade with any other railroad, as provided in the last section, may, after thirty days' notice, in writing, to such other railroad company, introduce and erect such interlocking or automatic signals or fixtures; and if such railroad company, after such notification, refuses to join with the railroad company giving such notice in the construction of such works or fixtures, it shall be lawful for said company to enter upon the right of way and tracks of such second company, in such manner as to not unnecessarily impede the operation of such road, and erect such works and fixtures, and may recover in any action at law from such second company one-half of the total cost of erecting and maintaining such interlocking or automatic signals or works or fixtures on both of said roads.

§ 1159 [20]. Mortgages.—That all mortgages executed by any railway company conveying any portion of its railway, with its franchises, that may be constructed in said Indian Territory, shall be recorded in the Department of the Interior, and the record thereof shall be evidence and notice of their execution, and shall convey all rights, franchises, and property of said company as therein expressed.

§ 1160 [21]. Amendment—Right to revise.—That Congress hereby reserves the right at any time to alter, amend, or repeal this act, or any portion thereof.

§ 1161 [22]. Any railway company accepting benefits of act subject to all burdens imposed thereby.—That any

railway company which has heretofore acquired, or may hereafter acquire, under any other act of Congress, a railroad right of way in Indian Territory may, in the manner herein prescribed, obtain any or all of the benefits and advantages of this act, and in such event shall become subject to all the requirements and responsibilities imposed by this act upon railroad companies acquiring a right of way hereunder. And where the time for the completion of a railroad in Indian Territory under any act granting a right of way therefor has expired, or shall hereafter expire, in advance of the construction of such railroad, or of any part thereof, the Secretary of the Interior may, upon good cause shown, extend the time for the completion of such railroad, or of any part thereof, for a time not exceeding two years from the date of such extension.

§ 1162 [23]. **Conditional repeal of previous act.**—That an Act entitled “An act to provide for the acquiring of rights of way by railroad companies through Indian reservations, Indian lands, and Indian allotments, and for other purposes,” approved March second, eighteen hundred and ninety-nine, so far as it applies to the Indian Territory and Oklahoma Territory, and all other acts or parts of acts inconsistent with this act are hereby repealed: Provided, that such repeal shall not affect any railroad company whose railroad is now actually being constructed, or any rights which have already accrued; but such railroads may be completed and such rights enforced in the manner provided by the laws under which such construction was commenced or under which such rights accrued: And provided further, that the provisions of this act shall apply also to the Osages’ Reservation and other Indian reservations and allotted Indian lands in the territory of Oklahoma, and all judicial proceedings herein authorized, may be commenced and prosecuted in the courts of said Oklahoma Territory which may now or hereafter exercise jurisdiction within said reservations or allotted lands.

§ 1162a. Secretary authorized to grant railway companies additional lands through Indian reservations.—That when, in the judgment of the Secretary of the Interior, it is necessary for any railway company owning or operating a line of railway in any Indian reservation to acquire lands in such Indian reservation for reservoirs, material, or ballast pits for the construction, repair, and maintenance of its railway, or for the purpose of planting and growing thereon trees to protect its line of railway, the said Secretary be, and he is hereby, authorized to grant such lands to any such railway company under such terms and conditions and such rules and regulations as may be prescribed by the said Secretary.

* * * That when any railway company desiring to secure the benefits of this provision shall file with the Secretary of the Interior an application describing the lands which it desires to purchase, and upon the payment of the price agreed upon the said Secretary shall cause such lands to be conveyed to the railway company applying therefor upon such terms and conditions as he may deem proper: Provided, That no lands shall be acquired under the terms of this provision in greater quantities than forty acres for any one reservoir, and one hundred and sixty acres for any material or ballast pit, to the extent of not more than one reservoir and one material or gravel pit in any one section of ten miles of any such railway in any Indian reservation: And provided further, That the lands acquired for tree planting shall be taken only at such places along the line of the railway company applying therefor as in the judgment of the said Secretary may be necessary, and shall be taken in strips adjoining and parallel with the right of way of the railway company taking the same, and shall not exceed one hundred and fifty feet in width.*

* Act March 3, 1909, c. 263, 35 Stat. 781.

CHAPTER 80

EASEMENTS IN INDIAN LANDS FOR PIPE LINE, TELEGRAPH,
TELEPHONES AND HIGHWAYS

- § 1163. Act providing for pipe lines through Indian lands.
1164. Grant of right of way for telephone lines through Indian lands, by Act of March 3, 1901.
1165. Act providing for opening of highways through Indian lands.
1166. The acquisition of easements in segregated lands for municipal purposes authorized.

§ 1163. Act providing for pipe lines through Indian lands.—That the Secretary of the Interior is hereby authorized and empowered to grant a right of way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from, and the maps of definite location of said lines approved by, the Secretary of the Interior: Provided, that the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass has been ob-

tained by the pipe line company: Provided further, that in case it is desired to run a pipe line under the line of any railroad, and satisfactory arrangements can not be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe line company shall be permitted to lay its lines under said railroad. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval. And where such lines are not subject to state or territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding five dollars for each ten miles of line so constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either state, territorial, or municipal authority. And incorporated cities and towns into and through which such pipe lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance, and care: Provided, that the rights herein granted shall not extend beyond a period of twenty years: Provided further, that the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this act for another period not to exceed twenty years from the expiration of the first

right, upon such terms and conditions as he may deem proper.¹

§ 1164. Grant of right of way for telephone lines through Indian lands, by Act of March 3, 1901.—That the Secretary of the Interior is hereby authorized and empowered to grant a right of way, in the nature of an easement, for the construction, operation, and maintenance of telephone and telegraph lines and offices for general telephone and telegraph business through any Indian reservation, through any lands held by an Indian tribe or nation in the Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from the Secretary of the Interior, and the maps of definite location of the lines shall be subject to his approval. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval; and where such lines are not subject to state or territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding five dollars for each ten miles of line so constructed and maintained; and all such lines shall be constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from

¹ 33 Stat. 65, c. 505.

the payment of any tax that may be lawfully assessed against them by either state, territorial, or municipal authority; and Congress hereby expressly reserves the right to regulate the tolls or charges for the transmission of messages over any lines constructed under the provisions of this act: Provided, that incorporated cities and towns into or through which such telephone or telegraphic lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities.

That lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the state or territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.²

§ 1165. Act providing for opening of highways through Indian lands.—That the Secretary of the Interior is hereby authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper state or local authorities for the opening and establishment of public highways, in accordance with the laws of the state or territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indians under any laws or treaties but which have not been conveyed to the allottees with full power of alienation.³

§ 1166. The acquisition of easements in segregated lands for municipal purposes authorized.—The surface only of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nation shall be subject to condemnation under the laws of the state of Oklahoma for state penal institutions, county and municipal purposes and for sewers and water systems: Provided, that the title to the surface of

² 31 Stat. 1083, c. 832, § 3.

³ 31 Stat. 1083, c. 832, § 4.

any lands so condemned shall revert to the Choctaw and Chickasaw Nation upon its ceasing to be used for the purpose for which it was condemned and the tribal relation is hereby continued for such purpose and no title to any mineral rights in said lands so condemned shall be acquired hereunder.⁴

⁴ Act March 3, 1909, c. 263, 35 Stat. 805.

PART III

CHAPTER 81

FORMS OF ALLOTMENT CERTIFICATES AND PATENTS OR DEEDS ISSUED TO ALLOTTEES OF THE CHOCTAW, CHICKASAW, CHEROKEE, CREEK AND SEMINOLE TRIBES OF INDIANS

- § 1167. Cherokee certificate of homestead allotment.
- 1168. Cherokee allotment certificate.
- 1169. Cherokee homestead deed.
- 1170. Cherokee allotment deed.
- 1171. Choctaw and Chickasaw homestead certificate.
- 1172. Choctaw and Chickasaw allotment certificate.
- 1173. Choctaw and Chickasaw homestead patent.
- 1174. Choctaw and Chickasaw allotment patent.
- 1175. Mississippi Choctaw homestead designation.
- 1176. Mississippi Choctaw allotment designation.
- 1177. Mississippi Choctaw homestead certificate.
- 1178. Mississippi Choctaw allotment certificate.
- 1179. Minor Mississippi Choctaw homestead certificate.
- 1180. Minor Mississippi Choctaw allotment certificate.
- 1181. Mississippi Choctaw homestead patent.
- 1182. Mississippi Choctaw allotment patent.
- 1183. Allotment certificate of Choctaw and Chickasaw freedmen.
- 1184. Allotment patent of Choctaw and Chickasaw freedmen.
- 1185. Creek certificate of selection.
- 1186. Creek homestead certificate.
- 1187. Creek allotment certificate.
- 1188. Creek allotment deed.
- 1189. Creek homestead deed.
- 1190. Seminole certificate of homestead designation.
- 1191. Seminole certificate of allotment.
- 1192. Seminole new-born certificate.
- 1193. Seminole deceased allottee certificate.

The effect of the various certificates of allotment and deeds or patents issued to allottees of the Five Civilized Tribes and freedmen, renders it desirable for the person who gives careful consideration to when the title passes, to consider the form and effect of these various certificates, deeds and conveyances. In order that all may have an opportunity to do so, it is deemed advisable to reproduce these forms and this will be done in the order in which the various tribes have been considered in Part I.

§ 1167. Cherokee certificate of homestead allotment.—Certificates of allotment in the Cherokee Nation were issued only in two forms; one for homestead called the “certifi-

cate of homestead allotment” and the other for the surplus lands, called the “certificate of allotment.” The certificate of homestead allotment in the Cherokee Nation is as follows:

Form 31

Certificate

No. _____

DEPARTMENT OF THE INTERIOR.

Commissioner to the Five Civilized Tribe

CERTIFICATE OF HOMESTEAD ALLOTMENT.

CHEROKEE LAND OFFICE.

_____ I. T. _____ 190_____

This certifies that _____
selected the following described land as a HOMESTEAD, viz.:

Subdivision of	Section	Town	Range

containing _____ acres more or less, as the case may be, according to the United States survey thereof. Total appraised value of land described in this certificate \$_____.

Roll Number _____

Cherokee Roll

Freedmen Roll

S. — T. — R. — S. — T. — R. —

S. — T. — R. — S. — T. — R. —

This certificate is not transferable.

Commissioner to the Five Civilized Tribes.

BLED.IND.(2D ED.)—52

§ 1169. Cherokee homestead deed.—The homestead deed issued to allottees of the Cherokee Nation is in the following form:

(80A)

Homestead Deed. Roll, No.....

THE CHEROKEE NATION.

(Formerly Indian Territory.)

OKLAHOMA.

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stat., 716), ratified by the Cherokee Nation August 7, 1902, it was provided that there should be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee Nation, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, and,

WHEREAS, It was provided by said Act of Congress that each member of said tribe shall, at the time of the selection of his allotment, designate, or have selected and designated for him, from his allotment, land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, as a homestead, for which separate certificate shall issue; and,

WHEREAS, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of, a citizen of said tribe, as a homestead,

NOW THEREFORE, I, the undersigned, the Principal Chief of the Cherokee Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey unto the said all right, title and interest of the Cherokee Nation, and of all other citizens of said Nation, in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing
.....
acres, more or less, as the case may be, according to the United

States survey thereof, subject, however, to the conditions provided by said Act of Congress pertaining to allotted homesteads.

IN WITNESS WHEREOF, I, the Principal Chief of the Cherokee Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed thisday of A. D. 190.....

.....
Principal Chief of the Cherokee Nation.

DEPARTMENT OF THE INTERIOR,
Approved, 190....

.....
Secretary.

By
Clerk.

§ 1170. Cherokee allotment deed.—The allotment deed issued to the allottee in the Cherokee Nation conveying lands in excess of the homestead is in the following form:

(77A)

Allotment Deed. Roll, No.....

THE CHEROKEE NATION.

(Formerly Indian Territory.)

OKLAHOMA.

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stat., 716), ratified by the Cherokee Nation August 7, 1902, it was provided that there should be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee Tribe, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, and,

WHEREAS, It was provided by said Act of Congress that each citizen shall designate or have designated and selected for him, at the time of his selection of allotment, out of his allotment, as a homestead, land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, for which he shall receive a separate certificate, and,

WHEREAS, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of, a citizen of said tribe, as an allotment exclusive of land equal in value to forty acres of the average allottable lands of the Cherokee Nation, selected as a homestead as aforesaid;

NOW THEREFORE, I, the undersigned, the Principal Chief of the Cherokee Nation, by virtue of the power and authority vested in me by aforesaid Act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey unto the said all right, title and interest of the Cherokee Nation, and of all other citizens of said Nation, in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing
.....
acres, more or less, as the case may be, according to the United

States survey thereof, subject, however, to all the provisions of said Act of Congress.

IN WITNESS WHEREOF, I, the Principal Chief of the Cherokee Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed thisday of A. D. 190.....

.....
Principal Chief of the Cherokee Nation.

DEPARTMENT OF THE INTERIOR,

Approved, 190....

.....
Secretary.

By
Clerk.

§ 1173. Choctaw and Chickasaw homestead patent.— Pursuant to the homestead certificate a patent or deed is issued entitled “homestead patent,” form of which is as follows:

(184A)

Homestead Patent.Roll, No.....
No.....	Date of Certificate.....

THE CHOCTAW AND CHICKASAW NATIONS.

(Formerly Indian Territory.)

OKLAHOMA.

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stat., 641), and ratified by the citizens of the Choctaw and Chickasaw Nations September 25, 1902, it was provided that there should be allotted, by the Commission to the Five Civilized Tribes, to each citizen of the Choctaw and Chickasaw Nations, land equal in value to three hundred and twenty acres of the average allottable lands of the Choctaw and Chickasaw Nations; and,

WHEREAS, It was provided by said Act of Congress that each member of said tribes shall at the time of the selection of his allotment, designate, or have selected and designated for him, from his allotment, land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue; and,

WHEREAS, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of, a citizen of the Nation, as a homestead:

NOW THEREFORE, We, the undersigned, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the twenty-ninth section of the Act of Congress of the United States, approved June 28, 1898 (30 Stat., 495), have granted and conveyed, and by these presents do grant and convey unto the said..... all right, title and interest of the Choctaw and Chickasaw Nations and of all other citizens of said Nations, in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing

 acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided

by the Act of Congress approved July 1, 1902 (32 Stat., 641), pertaining to allotted homesteads.

IN WITNESS WHEREOF, We, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, have hereto set our hands and caused the Great Seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, 190....

.....
Principal Chief of the Choctaw Nation.

Date, 190....

(Seal.)

.....
Governor of the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR,

Approved, 190....

.....

Secretary.

(Seal.)

By

Clerk.

§ 1174. Choctaw and Chickasaw allotment patent.—A patent or deed called an “allotment patent” is issued conveying the lands described in the allotment certificate and this deed or patent is in the following form:

(185A)
Allotment Patent. Roll No.....
No..... Date of Certificate.....

THE CHOCTAW AND CHICKASAW NATIONS.

(Formerly Indian Territory.)

OKLAHOMA.

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stat., 641), and ratified by the citizens of the Choctaw and Chickasaw Nations September 25, 1902, it was provided that there should be allotted, by the Commission to the Five Civilized Tribes, to each citizen of the Choctaw and Chickasaw Nations, land equal in value to three hundred and twenty acres of the average allottable lands of the Choctaw and Chickasaw Nations; and,

WHEREAS, It was provided by said Act of Congress that each member of said tribe shall at the time of the selection of his allotment, designate, or have selected and designated for him, from his allotment, land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue; and,

WHEREAS, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of, a citizen of the Nation, as an allotment, exclusive of land equal in value to one hundred and sixty acres of the average allottable lands of the Choctaw and Chickasaw Nations selected as a homestead, as aforesaid:

NOW THEREFORE, We, the undersigned, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the twenty-ninth section of the Act of Congress of the United States, approved June 28, 1898 (30 Stat., 495), have granted and conveyed, and by these presents do grant and convey unto the said all right, title and interest of the Choctaw and Chickasaw Nations and of all other citizens of said Nations, in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing
.....
acres, more or less, as the case may be, according to the United

States survey thereof, subject, however, to the provisions of the Act of Congress approved July 1, 1902 (32 Stat., 641).

IN WITNESS WHEREOF, We, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, have hereunto set our hands and caused the Great Seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, 190....

.....
Principal Chief of the Choctaw Nation.

Date, 190....

(Seal.)

.....
Governor of the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR,

Approved, 190....

.....
Secretary.

(Seal.)

By
Clerk.

§ 1177. Mississippi Choctaw homestead certificate.— Upon the proof of residence required by statute of a Mississippi Choctaw a homestead certificate is issued, as to that part of the allotment selected as a homestead, showing a compliance with the statute, and that certificate is as follows:

193A

Certificate

Roll of

No. _____

Mississippi Choctaws,

Muskogee, Indian Territory.

No. _____

HOMESTEAD CERTIFICATE.
DEPARTMENT OF THE INTERIOR.

Commissioner to the Five Civilized Tribes.

Allotment of the lands of the Choctaws and Chickasaws.

This is to certify that the enrollment of _____ as a Mississippi Choctaw has been duly approved by the Secretary of the Interior and that due proof has been made that _____ has complied with the provisions of the Act of Congress approved July 1, 1902 (32 Stats., 641), relative to residence upon the lands of the Choctaw and Chickasaw Nations, and that the following described land has been regularly allotted to _____ as a homestead:

Subdivision	Sec.	Twp.	Range	Area:		Valuation:	
				Acres	100ths	Dollars	Cts.

of the Indian base and meridian, containing _____ acres, more or less, as the case may be, according to the United States survey thereof.

The total appraised value of the land described in this certificate amounts to \$_____.

This certificate is not transferable.

Commissioner to the Five Civilized Tribes.

§ 1178. Mississippi Choctaw allotment certificate.—A like certificate called an allotment certificate is issued covering the surplus land or land in excess of homestead and is in the following form:

194A

Certificate

Roll of

No._____

Mississippi Choctaws,

Muskogee, Indian Territory.

No._____

ALLOTMENT CERTIFICATE.

DEPARTMENT OF THE INTERIOR.

Commissioner to the Five Civilized Tribes.

Allotment of the lands of the Choctaws and Chickasaws.

This is to certify that the enrollment of _____ as a Mississippi Choctaw has been duly approved by the Secretary of the Interior and that due proof has been made that _____ has complied with the provisions of the Act of Congress approved July 1, 1902 (32 Stats., 641), relative to residence upon the lands of the Choctaw and Chickasaw Nations, and that the following described land has been regularly allotted to _____ as an allotment exclusive of the homestead:

Subdivision	Sec.	Twp.	Range	Area:		Valuation:	
				Acres	100ths	Dollars	Cts.

of the Indian base and meridian, containing_____acres, more or less, as the case may be, according to the United States survey thereof.

The total appraised value of the land described in this certificate amounts to \$_____.

This certificate is not transferable.

Commissioner to the Five Civilized Tribes.

§ 1179. Minor Mississippi Choctaw homestead certificate.—Additional allotments were made to minor Mississippi Choctaws under the Act of Congress of April 26, 1906, and the homestead certificate issued to such minor pursuant thereto is as follows:

162A

HOMESTEAD CERTIFICATE.

Department of the Interior.

Minor Mississippi Choctaws

(Act of Congress approved April 26, 1906.)

Roll No. _____

Certificate

No. _____

Choctaw Land Office.

COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

In the matter of the allotment of the lands of the CHOCTAWS and CHICKASAWS.

MISSISSIPPI CHOCTAWS.

This Certifies that _____ has this day been allotted as a homestead, the following described land, viz.:

Subdivision of	Section	Town	Range	Acres	100th

of the Indian base and meridian, containing _____ acres more or less, as the case may be, according to the United States survey thereof.

Total appraised value of the land described in this certificate: \$ _____

CHOCTAW NATION.

This certificate is not transferable.

Commissioner to the Five Civilized Tribes.

BLED.IND.(2D ED.)—53

§ 1181. Mississippi Choctaw homestead patent.—The homestead patent, issued to the Mississippi Choctaw who has selected an allotment in either the Choctaw or Chickasaw Nation, is as follows:

(7A)

Mississippi Choctaw
Homestead Patent No.
Mississippi Choctaw Roll No.....
Date of Certificate

THE CHOCTAW AND CHICKASAW NATIONS.

(Formerly Indian Territory.)

OKLAHOMA.

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stats., 641), and ratified by the citizens of the Choctaw and Chickasaw Nations September 25, 1902, it is provided that there shall be allotted to each Mississippi Choctaw, whose name appears upon the final roll of the Mississippi Choctaws, land equal in value to 320 acres of the average allottable lands of the Choctaw and Chickasaw Nations, and that each enrolled Mississippi Choctaw shall designate, or have designated for him, from his allotment, land equal in value to 160 acres of the average allottable lands of said Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue, and

WHEREAS, It is further provided by said Act of Congress that upon due proof being made of a continuous bona fide residence upon the lands of the Choctaw and Chickasaw Nations of any such Mississippi Choctaw for the period therein prescribed, he shall receive a patent for his allotment and shall hold the land allotted to him subject to the limitations provided in the aforesaid Act for citizens of said Nations, and

WHEREAS,
is a Mississippi Choctaw of theblood, whose name appears upon the roll of Mississippi Choctaws approved by the Secretary of the Interior, and

WHEREAS, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of the said
.....as a homestead and that due proof has been made that the said
has complied with the provisions of the aforesaid Act of Congress relative to residence upon the lands of the Choctaw and Chickasaw Nations:

NOW THEREFORE, We, the undersigned, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the 29th section of the Act of Congress approved June 28, 1898 (30 Stats., 495),

have granted and conveyed, and by these presents do grant and convey, unto the said
, all right, title and interest of the Choctaw and Chickasaw nations, and of all other citizens of said nations, in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing
acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all the provisions of the aforesaid Acts of Congress and to all other laws of the United States, pertaining to the alienation and taxation of land included in such homestead allotments, or otherwise affecting the same and applicable to the said allottee or his heirs.

IN WITNESS WHEREOF, We, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, have hereunto set our hands and caused the Great Seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, 190....

.....
Principal Chief of the Choctaw Nation.

Date, 190....

.....
Governor of the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR,

Approved, 190....

.....
Secretary.

By
Clerk.

§ 1182. Mississippi Choctaw allotment patent.—The allotment patent issued to the Mississippi Choctaw for lands in excess of a homestead, or land known as the surplus allotment, is as follows:

(10A)

Mississippi Choctaw
Allotment Patent No.
Mississippi Choctaw Roll No.

THE CHOCTAW AND CHICKASAW NATIONS.

(Formerly Indian Territory.)

OKLAHOMA.

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stats., 641), and ratified by the citizens of the Choctaw and Chickasaw Nations September 25, 1902, it is provided that there shall be allotted to each Mississippi Choctaw, whose name appears upon the final roll of the Mississippi Choctaws, land equal in value to 320 acres of the average allottable lands of the Choctaw and Chickasaw Nations, and that each enrolled Mississippi Choctaw shall designate, or have designated for him, from his allotment, land equal in value to 160 acres of the average allottable lands of said Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue, and

WHEREAS, It is further provided by said Act of Congress that upon due proof being made of a continuous bona fide residence upon the lands of the Choctaw and Chickasaw Nations of any such Mississippi Choctaw for the period therein prescribed, he shall receive a patent for his allotment and shall hold the land allotted to him subject to the limitations provided in the aforesaid Act for citizens of said Nations, and

WHEREAS,
is a Mississippi Choctaw of theblood, whose name appears upon the roll of Mississippi Choctaws approved by the Secretary of the Interior, and

WHEREAS, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of the said
.....as an allotment, exclusive of land designated as a homestead and that due proof has been made that the said.....
.....has complied with the provisions of the aforesaid Act of Congress relative to residence upon the lands of the Choctaw and Chickasaw Nations:

NOW THEREFORE, We, the undersigned, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the 29th section of the Act of Congress approved June 28, 1898 (30 Stats., 495),

have granted and conveyed, and by these presents do grant and convey, unto the said
, all right, title and interest of the Choctaw and Chickasaw nations, and of all other citizens of said nations, in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing
acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all the provisions of the aforesaid Acts of Congress and to all other laws of the United States, pertaining to the alienation and taxation of land included in such allotments, or otherwise affecting the same and applicable to the said allottee or his heirs.

IN WITNESS WHEREOF, We, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, have hereunto set our hands and caused the Great Seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, 190....

.....
Principal Chief of the Choctaw Nation.

Date, 190....

.....
Governor of the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR,

Approved, 190....

.....
Secretary.

By
Clerk.

freedmen.—The allotment deed or patent issued to the Choctaw and Chickasaw freedmen, pursuant to the certificate above set out, is as follows:

(188A)

Patent to Freedman. Freedman Roll.....
No. Date of Certificate

THE CHOCTAW AND CHICKASAW NATIONS.

(Formerly Indian Territory.)

OKLAHOMA.

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stat., 641), and ratified by the citizens of the Choctaw and Chickasaw Nations, September 25, 1902, it was provided that there should be allotted, by the Commission to the Five Civilized Tribes, to each Choctaw and Chickasaw freedman, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw Nations, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment; and,

WHEREAS, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of freedman, as an allotment:

NOW THEREFORE, We, the undersigned, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the twenty-ninth section of the Act of Congress of the United States, approved June 28, 1898 (30 Stat., 496), have granted and conveyed, and by these presents do grant and convey unto the said all right, title, and interest of the Choctaw and Chickasaw Nations and of all citizens of said Nations, in and to the following described land, viz:

of the Indian Base and Meridian, in Oklahoma, containing

.....

acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the provisions of the Act of Congress, approved July 1, 1902 (32 Stat., 641).

IN WITNESS WHEREOF, We, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, have hereunto set our hands and caused the Great Seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, 190....

.....
Principal Chief of the Choctaw Nation.

Date, 190....

(Seal.)

.....
Governor of the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR,

Approved, 190....

.....
Secretary.

(Seal.)

By
Olerk.

§ 1185. Creek certificate of selection.—In the Creek Nation three forms of certificates were used, being styled “certificate of selection,” “homestead certificate” and “allotment certificate.” The “homestead certificate” was issued for the land selected as a homestead, the “certificate of selection” for the land selected in excess of a homestead, and the “allotment certificate” was issued to the minor Indians, entitled “new-born allottees.”

The “certificate of selection” is as follows:

Allottee's

CERTIFICATE OF SELECTION.

Roll No.....

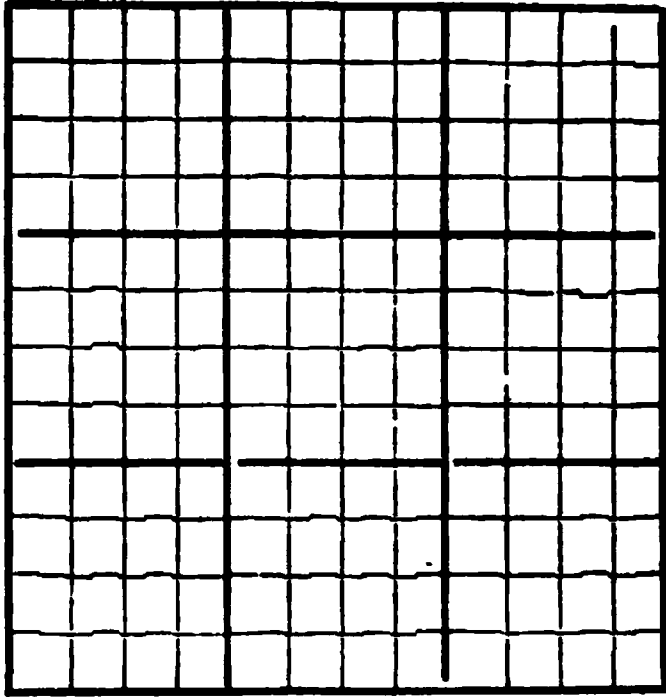
Selection

CREEK NATION.

No. _____

Commission to the Five Civilized Tribes.

Muskogee Land Office.



*This certifies that _____
has this day filed his selection of the following described land, viz.:*

Subdivision of	Section	Town	Range

*of the Indian Base and Meridian in Creek Nation containing _____
acres more or less, as the case may be, according to the United
States survey thereof.*

This certificate is not transferable.

Commission to the Five Civilized Tribes. _____

Chairman.

§ 1186. Creek homestead certificate.—The “Creek homestead certificate” is as follows:

Allottee's
New-Born
Roll No. _____

HOMESTEAD CERTIFICATE.

CREEK NATION.

Department of the Interior.

Muskogee Land Office.

This certifies that there has this day been allotted as a homestead, to _____ the following described land, viz.:

Subdivision of	Section	Town	Range

of the Indian Base and Meridian in Creek Nation containing _____ acres more or less, as the case may be, according to the United States survey thereof. Total appraised value of the land described in this certificate \$ _____.

This certificate is not transferable.

§ 1187. Creek allotment certificate.—The Creek “allotment certificate” issued to new-borns is as follows:

Allottee's
New-Born

Roll No. _____

ALLOTMENT CERTIFICATE.

CREEK NATION.

Department of the Interior.
Muskogee Land Office.

Certificate
No. _____

This certifies that there has this day been allotted to the following described land, viz.:

Subdivision of	Section	Town	Range

of the Indian Base and Meridian in Creek Nation containing _____ acres more or less, as the case may be, according to the United States survey thereof. Total appraised value of the land described in this certificate \$ _____.

This certificate is not transferable.

§ 1188. Creek allotment deed.—Two forms of deed were used in making conveyances to the allottees of the Creek Nation; one is entitled “allotment deed” and is as follows:

Allotment Deed.

———— Roll No. ————

THE MUSKOGEE (CREEK) NATION.
(Formerly Indian Territory.)

OKLAHOMA.

To all to Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of
a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead,

Now, Therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said
all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing
.....
acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all *provisions* of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In Witness Whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed thisday of....., A. D. 190.....

*.....
Principal Chief of the Muskogee (Creek) Nation.*

Department of the Interior,

Approved, 190.....

*.....
Secretary.*

By
Clerk.

§ 1189. Creek homestead deed.—The other is entitled “homestead deed” and is as follows:

Homestead Deed.

Roll No.

THE MUSKOGEE (CREEK) NATION.
(Formerly Indian Territory.)

OKLAHOMA.

To all to Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of a citizen of said tribe, as a homestead,

Now, Therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz.:

of the Indian Base and Meridian, in Oklahoma, containing
.....
acres, more or less, as the case may be, according to the United States survey thereof, subject, however to the *conditions* provided by said Act of Congress and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to the provisions of said Act of Congress relating to the use, devise and descent of said land after the death of the said
.....; and subject, also, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Publie No. 200).

In Witness Whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed thisday of....., A. D. 190.....

.....
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior,
Approved, 190.....,

.....
Secretary.

By
Clerk.

§ 1192. **Seminole new-born certificate.**—For allotments made to those members enrolled by legislation subsequent to the Seminole Agreement, the following form of certificate is used:

CERTIFICATE OF ALLOTMENT.

No. _____

Indian Territory.

No. _____

New-Born Roll

Certificate

SEMINOLE NATION.

DEPARTMENT OF THE INTERIOR.

Commissioner to the Five Civilized Tribes.

SEMINOLE LAND OFFICE.

S. — T. — R. — S. — T. — R. —

S. — T. — R. — S. — T. — R. —

This certifies that _____

has this day been allotted the following described land, viz.:

Subdivision of	Section	Town	Range	Acres	100th

containing _____ acres more or less as the case may be, according to the United States survey thereof.

This certificate is not transferable.

Commissioner to the Five Civilized Tribes.

§ 1193. Seminole deceased allottee certificate.—Another form of certificate is used for allotments in the name of the deceased member of the tribe. That form is as follows:

DEPARTMENT OF THE INTERIOR.

Commission to the Five Civilized Tribes.

SEMINOLE NATION.

Seminole Roll
No. _____

Certificate
Deceased No. _____

WEWOKA LAND OFFICE.

Wewoka, I. T. _____190_____
This is to certify that the following described land has been
set apart as the allotment of _____Deceased, viz.:

Subdivision of	Section	Town	Range

containing _____ acres 1st class _____ acres 2nd class and _____
acres 3rd class, more or less as the case may be according to the
United States survey thereof.

Total appraised value of allotment \$_____.
Commission to the Five Civilized Tribes.

Chairman.

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